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No. 82-281

In The
Supreme Court of the United States

OCTOBER TERM, 1982

DAVID C. TREEN, ET AL.,
Petitioners,

VERSUS

HAYES WILLIAMS, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a state official is entitled to assert a qualified immunity defense when his actions do not violate a clearly established constitutional right even though his actions do violate established state law or regulations.

PARTIES TO PROCEEDING

The undersigned, counsel of record for the defendants-petitioners, certify that the following listed parties are all the parties to the proceeding in the Fifth Circuit Court of Appeals.

Hayes Williams, plaintiff-respondent
Arthur Mitchell, Jr., plaintiff-respondent
John J. McKeithen, defendant-petitioner
Louis Sowers, defendant-petitioner
C. Murray Henderson, defendant-petitioner
Lloyd Hoyle, defendant-petitioner
Hayden J. Dees, defendant-petitioner
Robert Bryan, defendant-petitioner
Walter Pence, defendant-petitioner
Bert Dixon, defendant-petitioner
D. M. Wood, defendant-petitioner

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No.

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On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the United States District Court for the Middle District of Louisiana on the merits of this case on the issues of injunctive relief is unreported, *Williams, et al. v. McKeithen, et al.*, (U.S.D.C. M.D. of La., C.A. No. 71-98-B, unpublished, decided June 10, 1975). In this opinion, the United States District Judge adopted without change the Report and Recommendations, which is unreported, of United States Magis-

trate Frank J. Polozola who was appointed special master in this matter. The opinion of the United States Court of Appeals for the Fifth Circuit affirming the district court's decision and remanding for further proceedings is reported as *Williams v. Edwards*, 547 F.2d 1206 (5th Cir.,1977). On August 6, 1980, United States District Judge Frank J. Polozola issued an unreported opinion denying plaintiffs' claims for monetary damages, *Williams, et al. v. McKeithen, et al.*, C.A. 71-98-B (M.D., La. 1980). Judge Polozola, on August 5, 1980, issued a reported opinion awarding attorney fees to the plaintiffs, *Williams, et al. v. McKeithen et al.*, 495 F.Supp. 707 (M.D., La. 1980), *supra*. The opinion of the United States Court of Appeals for the Fifth Circuit reversing and remanding the District Court's decision on the denial of plaintiffs' claims for monetary damages is reported as *Williams v. Treen*, 671 F.2d 892 (5th Cir., 1982).

JURISDICTION

The panel opinion of the United State Court of Appeals for the Fifth Circuit is dated March 31, 1982. A Motion for Panel Rehearing was denied on April 28, 1982. The Judgment Order from the United States District Court for the Middle District of Louisiana is dated August 6, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The statute involved in this case is 42 U.S.C. Section 1983:

> "Every person who, under color or any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

STATEMENT OF FACTS

Plaintiffs, Hayes Williams, Arthur Mitchell, Jr., Lee D. Stevenson, and Lazarus D. Joseph, Jr., all (were) inmates at the Louisiana State Penitentiary at Angola, Louisiana, filed a complaint on March 30, 1971 against various Louisiana State officials including administrators and officers of the Louisiana Department of Corrections and the Louisiana State Penitentiary at Angola, Louisiana. The plaintiffs filed their suit pursuant to 42 U.S.C. Section 1983 and alleged among other claims that the overall conditions of confinement at the Louisiana State Penitentiary allegedly violated the Fourteenth and Eighth Amendments of the United States Constitution at the time of and prior to March 30, 1971.

All of the original plaintiffs in this action alleged that the overall conditions of confinement at Louisiana State Penitentiary in 1971 constituted a violation of the Eighth Amendment. They also claimed discrimination based on race which allegedly violated the Fourteenth Amendment. In addition, each plaintiff made individual claims. Hayes Williams and Arthur Mitchell, Jr. claimed that they were punished and moved to a more restrictive

area of the prison without being afforded Due Process of Law in a disciplinary proceeding. Arthur Mitchell, Jr., also alleged that he was denied adequate medical care. Lee Stevenson claimed that he was injured by a fellow inmate due to the defendants alleged failure to take proper precautions to protect him and that his mail to his attorney was censored. Lastly, Lazarus Joseph, Jr., alleged that he was discriminated against because of his religion. All of the aforementioned contentions allegedly occurred prior to the institution of this action on March 30, 1971.

The plaintiffs' complaint prayed for injunctive relief and monetary damages. In response, the defendants filed a Motion for Summary Judgment on July 9, 1971, which was denied on February 21, 1972.

On December 3 and 4, 1973 a hearing on the merits was held before United States Magistrate Frank J. Polozola who was appointed special master to hear argument and evidence on both the injunctive relief and monetary damages claim. Subsequently, in June of 1975, the injunctive relief claim was severed from the claim for monetary damages. Also, in June of 1975, United States District Judge, for the Middle District of Louisiana, E. Gordon West adopted the special master's report without change and found that conditions at Angola "shocked the conscience of any right thinking person" and "flagrantly violated basic constitutional requirements as well as applicable state laws." He further found that "state authorities (were) either failing or refusing to take the necessary steps to correct these conditions." *Williams v. Edwards*, 547 F.2d 1206, (5th Cir., 1977).

Accordingly, Judge West granted broad injunctive relief designed to improve the overall conditions at the facility. *Williams v. McKeithen*, (U.S.D.C., M.D. of La., C.A. No. 71-98-B, unpublished, decided June 10, 1975). It was this order granting injunctive relief by United States District Judge E. Gordon West which was affirmed by the United States Court of Appeals for the Fifth Circuit in *Williams v. Edwards, supra.*

On August 6, 1980, United States District, Judge for the Middle District of Louisiana, Frank J. Polozola issued a ruling with respect to the plaintiff's individual claims for damages. Citing to this Honorable Court's decision in *Procunier v. Navarette*, 434 U.S. 555 (1978), United States District Judge Frank J. Polozola held that insofar as the rights allegedly violated by the prison officials had not been "clearly established" at the times in question, the defendants were immune from personal liability. Based on this, United States District Judge Frank J. Polozola dismissed each of the damage claims.

The four plaintiffs appealed to the United States Court of Appeals for the Fifth Circuit from the dismissal of their individual claims, arguing: (1) that the appeals of all four plaintiffs are properly before this Court, (2) that the trial court erred in finding the defendants immune from personal liability without first holding an evidentiary hearing in which the defendants would be required to assert and prove their entitlement to an immunity, and (3) *that the defendants are in fact not entitled to an immunity because their conduct contravened law which was clearly established at the time of the violations.* The appeals to the United States Court of Appeals for the

Fifth Circuit by plaintiffs Lee D. Stevenson and Lazarus D. Joseph, Jr., were denied for failure to file their Appeals timely. The United States Court of Appeals for the Fifth Circuit reversed the dismissal by United States District Judge Frank J. Polozola as to the damage claims by Arthur Mitchell and Hayes Williams and remanded the case for further proceedings. *Williams v. Treen*, 671 F.2d 892 (5th Cir., 1982).

The United States Court of Appeals for the Fifth Circuit in *Williams v. Treen, supra*, held,

> "(T)hat when a state official violates the constitutional rights of a citizen, and in so doing also violates clearly established state law which enforces those rights, the defendant official is not entitled to an immunity which is based upon reasonable good faith." *Id.* at 900.

The defendants timely applied to the United States Court of Appeals for the Fifth Circuit for a rehearing on this holding: The application for a rehearing was denied by the United States Court of Appeals for the Fifth Circuit on April 28, 1982.

The defendants are now applying to this Honorable Court for a Writ of Certiorari pursuant to 28 U.S.C. 1254(1).

The petitioners here, defendants below, respectfully contend that the only facts pertinent to this application for a Writ of Certiorari are that the original complaint was filed on March 30, 1971 and that on or prior to March 30, 1971 the United States Court of Appeals for the Fifth indicated that no clearly established United

States Constitutional, legislative or jurisprudential right existed as to a state inmate's right to safe and sanitary conditions of confinement. *Williams v. Treen, supra,* at 898-899.

REASONS FOR THE ALLOWANCE OF WRIT

The decision of the Fifth Circuit Court of Appeals should be reviewed because:

> The Fifth Circuit Court of Appeals erred in its interpretation and application of the qualified immunity defense in 42 U.S.C. Section 1983 cases by concluding that when there was a violation of a clearly established state law but no violation of a clearly established federal law at the time of or prior to the filing of an action a state official is not entitled to the qualified immunity defense because the official's belief in the lawfulness of action, under state law, is unreasonable.

State officials are entitled to a qualified immunity from liability for acts done in their official capacity on the basis on an objectively reasonable belief that those acts were not unlawful. *Gomez v. Toledo,* 446 U.S. 635, 100 S.Ct. 1920, at 1923 (1980). This Honorable Court in numerous cases has indicated that when a state official violates the constitutional rights of a citizen, *and* in so doing also violates clearly established state law which enforces those rights, the state official is not entitled to an immunity which is based upon reasonable good faith. *Scheuer v. Rhodes,* 416 U.S. 232 (1974). *Procunier v. Navarette,* 434 U.S. 555 (1978) and *Butz v. Economou,* 438 U.S. 478 (1978). The petitioners respectfully contend that these cases do not stand for the proposition that the

violation of any state law without a corresponding clearly established federal constitutional right automatically defeats the qualified immunity defense.

A Section 1983 Plaintiff must allege a deprivation of a federally protected right in order to set forth a prima facie case, *Maine v. Thiboutot*, 448 U.S. 1(1980); violation of state law alone does not give rise to a cause of action under Section 1983. *Bills v. Henderson*, 631 F.2d 1287 (6th Cir., 1980). In this case, according to the opinion of the Fifth Circuit, the state officials only violated a clearly established state law. *Williams v. Treen, supra*, at 900. This Section 1983 cause of action alleged facts that the federal constitutional rights of these inmates were violated. However, the only clearly established law which was violated by the state officials was a state law. The Fifth Circuit erred in interpreting and applying the test for reasonable good faith as outlined in *Scheuer v. Rhodes, supra, Procunier v. Navarette, supra,* and *Butz v. Economou, supra.*

The test for reasonable good faith is conjunctive in nature. Under this conjunctive test a state official must violate a clearly established state law *and* that state law must enforce a clearly established federally protected constitutional right of a citizen. *Scheuer v. Rhodes, supra, Procunier v. Navarette, supra,* and *Butz v. Economou, supra.*

Prior to and including the filing of the plaintiff's lawsuit there was not a clearly established federal law which stated or implied an inmate's right to safe and sanitary conditions of confinements. The Fifth Circuit acknowledges in its opinion in the instant case that a review of

the Federal Reporter reveals only one Fifth Circuit Opinion "which suggests that conditions such as those at Angola, might violate the constitutional rights of inmates", *Williams v. Treen, supra,* at 898 Even so, the Fifth Circuit considered the findings of the District Court that the conditions of confinement at the Louisiana State Penitentiary were in violation of the state fire, safety, and health regulations, *Williams v. Treen, supra,* at 898-899, as sufficient to conclude that defendant state officials are not entitled to the protections of the qualified immunity defense because the lawfulness of the state officials action is per se unreasonable. Thus, the Fifth Circuit concluded that the defendant-state officials were not in good faith, although there was not a clearly established constitutional right of inmates concerning conditions of confinement up to and including the filing of the plaintiffs' complaint on March 30, 1971. In fact, the Fifth Circuit's holding, if allowed to stand, will raise state law to the level of federal law.

In *Butz v. Economou, supra,* at 2906, this Honorable Court reviewed the jurisprudence concerning when a state official is entitled to the qualified immunity defense and stated:

> Subsequent decisions have applied the Scheuer standard in other contexts. In *Wood v. Strickland,* 420 U.S. 308, 95 S.Ct. 992, 43 L.Ed. 2d. 214 (1975), school administrators were held entitled to claim a similar qualified immunity. *A school board member would lose his immunity from a Section 1983 suit only if "he knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional*

> *rights of the student affected, or if he took the action with the malicious intention to cause a deprivation of constitutional rights or other injury to the student.*" 420 U.S., at 322, 95 S.Ct., at 1001. In *O'Conner v. Donaldson*, 422 U.S. 563, 95 S.Ct. 2486, 45 L.Ed. 2d. 396 (1975), we applied the same standard to the superintendent of a state hospital. In *Procunier v. Navarette*, 434 U.S. 555, 98 S.Ct. 855, 55 L.Ed. 2d 24 (1978), we held that prison administrators would be adequately protected by the qualified immunity outlined in Scheuer and Wood. We emphasized, however, that, at least in the absence of some showing of malice, an official would not be held liable in damages under Section 1983 unless the constitutional right he was alleged to have violated was "clearly established" at the time of the violation.

Petitioners submit that to allow the holding of the Fifth Circuit to stand would alter the conjunctive test for reasonable good faith under the qualified immunity defense by not allowing state officials to assert it when they have violated a clearly established state law but no clearly established corresponding federal constitutionally protected right exists at the time of the violation of state law. This would place an undue and unreasonable burden upon state officials to be so prescient as to forecast decisions which federal judges find very difficult to make.

CONCLUSION

Petitioners submit that the magnitude of this holding is an important issue of federal law which will have significant ramifications for all state correctional sys-

tems and state officials involved in those systems because of the broad spectrum of prisoners' rights and newly evolving standards to which state official must conform. Because of the above and foregoing it is necessary for This Honorable Court to grant certiorari in this case.

Respectfully submitted,

BY: _____

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing petition for Writ of Certiorari has been placed in the United States Mail, postage prepaid to Mr. George M. Sticker, counsel for the Respondents.

This 27th day of July, 1982.

_____

J. MARVIN MONTGOMERY

No.

In the
Supreme Court of the United States

OCTOBER TERM, 1982

DAVID C. TREEN, ET AL.,
Petitioners,

VERSUS

HAYES WILLIAMS, ET AL.,
Respondents.

AFFIDAVIT

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned Notary Public duly commissioned and qualified in and for the Parish and State aforesaid personally came and appeared.

J. MARVIN MONTGOMERY

who, being by me duly sworn did depose and say that:

He is a member of the Bar of the United States Supreme Court.

He mailed the petition for Writ of Certiorari on July 27, 1982 by placing it in first class United States Mail, properly addressed to the Clerk of the U.S. Supreme Court and postage prepaid.

SWORN TO AND SUBSCRIBED BEFORE ME

this ____ day of _____, 1982, at Baton Rouge, Louisiana.

_____

J. MARVIN MONTGOMERY

_____

BRADY LOUIS JONES, III
NOTARY PUBLIC

No.

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APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 80-3792

HAYES WILLIAMS, AND ARTHUR MITCHELL,
Plaintiffs-Appellants,

VERSUS

DAVID C. TREEN, GOVERNOR OF THE STATE OF LOUISIANA, ET AL.,
Defendants-Appellees.

Appeals from the United States District Court for the Middle District of Louisiana

---

ON PETITION FOR REHEARING
(April 28, 1982)

Before CHARLES CLARK, Chief Judge, GOLDBERG and WILLIAMS, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby DENIED.

ENTERED FOR THE COURT:

/s/ CHARLES CLARK
UNITED STATES CIRCUIT JUDGE

APPENDIX B

HAYES WILLIAMS AND ARTHUR MITCHELL,
Plaintiffs-Appellants,

v.

DAVID C. TREEN, GOVERNOR OF THE STATE OF LOUISIANA, ET AL.,
Defendants-Appellees.

No. 80-3792.

United States Court of Appeals,
Fifth Circuit.

March 31, 1982.

Four prisoners brought action against state prison officials seeking damages for deprivation of constitutional rights. The United States District Court for the Middle District of Louisiana, Frank J. Polozola, J., dismissed the action, and the prisoners appealed. The Court of Appeals, Goldberg, Circuit Judge, held that: (1) two prisoners, who failed to file appeals, forfeited their right to appeal; (2) district court erred in dismissing the action without first developing the factual record necessary to support its finding that each of the state prison officials were entitled to a qualified immunity; (3) insofar as the conditions of confinement at the state prison contravened clearly established state law, the state prison officials' belief in the lawfulness of those conditions was per se unreasonable and they were not entitled to claim an immunity based on reasonable good faith; (4) if the state prison officials knowingly deprived prisoner of needed medication, they violated the constitutional prohibition against cruel and inhuman punishment and they would not be entitled to a qualified immunity from liabil-

ity; and (5) although prisoners had been subjected to unlawful racial segregation policy at the state prison, they never sought monetary damages for this violation of their constitutional rights and, thus, the question of the state prison officials' personal immunity from liability for this violation was never in issue.

Reversed and remanded; untimely appeals dismissed.

1. Federal Courts Key 653

Prisoners, who failed to file timely appeals from district court's dismissal of their claims against state prison officials for damages for deprivation of their constitutional rights, forfeited their right to appeal and their appeals were required to be dismissed. F.R.A.P.Rule 4(a), 28 U.S.C.A.; 42 U.S.C.A. § 1983.

2. Officers and Public Employees Key 114

Qualified immunity can only be claimed by those officials whose positions require exercise of official discretion.

3. Officers and Public Employees Key 114

To claim qualified immunity, an official must show that the allegedly wrongful actions were undertaken pursuant to the performance of his duties and within scope of his discretionary authority.

4. Officers and Public Employees Key 114

Qualified immunity is only available to those officials who affirmatively assert the defense and prove that they were acting within the scope of their discretionary authority.

5. Officers and Public Employees Key 114

Affirmative defense of qualified immunity is not available to those officials who either act with malice or who contravene clearly established law.

6. Civil Rights Key 13.14
Federal Civil Procedure Key 1788.10

Issues whether state prison officials' positions required the exercise of discretion and whether their allegedly tortious conduct was undertaken within the scope of their discretionary authority such that they were entitled to qualified immunity were questions of fact which had to be determined through the use of appropriate fact-finding procedures, i.e., summary judgment proceedings or evidentiary hearing.

7. Federal Civil Procedure Key 1788.10

District court erred in dismissing prisoners' action against state prison officials for damages for deprivation of their constitutional rights without first developing the factual record necessary to support its finding that each of the state prison officials was entitled to qualified immunity. 42 U.S.C.A. § 1983.

8. Civil Rights Key 13.12(3)

Plaintiffs claiming damages against public officials for deprivation of rights secured by federal law need not allege bad faith until an official actually asserts a claim to immunity. 42 U.S.C.A. § 1983.

9. Officers and Public Employees Key 114

If an official's conduct contravenes his own state's explicit and clearly established regulations, a subjective belief in the lawfulness of his action is per se unreason-

able and he may not claim qualified immunity from liability for his conduct.

10. Civil Rights Key 13.8(2)

Insofar as conditions of confinement at state prison contravened clearly established state law, state prison officials' belief in the lawfulness of those conditions was per se unreasonable and they were not entitled to claim an immunity based on reasonable good faith.

11. Civil Rights Key 13.12(7)

Plaintiff must allege a deprivation of a federally protected right in order to set forth a prima facie case under the Civil Rights Act of 1871; violation of state law alone does not give rise to a cause of action under the Act. 42 U.S.C.A. § 1982.

12. Civil Rights Key 13.8(2)

When a state official violates the constitutional rights of a citizen, and in so doing also violates clearly established state law which enforces those rights, the defendant official is not entitled to an immunity which is based upon reasonable good faith. 42 U.S.C.A. § 1983.

13. Civil Rights Key 13.13(1)

In order to establish an official's personal liability for deprivation of rights secured by federal law, plaintiff must show that the particular official's actions, or inaction, caused a violation of his rights, and a general allegation of administrative negligence fails to state a claim. 42 U.S.C.A. § 1983.

14. Constitutional Law Key 270(1)

Federal constitutional prohibition against infliction of cruel and unusual punishment is binding on the states

through the due process clause of the Fourteenth Amendment and is enforced against state prison officials under the statute proscribing the deprivation of rights secured by federal law. U.S.C.A.Const.Amend. 14; 42 U.S.C.A. § 1983.

15. Constitutional Law Key 82(13)

State official who knowingly deprives a prisoner of vital medical treatment violates constitutionally protected rights. U.S.C.A.Const.Amends. 8, 14.

16. Civil Rights Key 13.8(2)
Criminal Law Key 1213

If state prison officials knowingly deprived prisoner of needed medication, they violated the constitutional prohibition against cruel and inhuman punishment and they would not be entitled to a qualified immunity from liability arising from the deprivation. 42 U.S.C.A. § 1983; U.S.C.A.Const.Amends. 8, 14.

17. Civil Rights Key 13.8(2)

Although prisoners had been subjected to unlawful racial segregation policy in state prison, they never sought monetary damages for this violation of their constitutional rights and, thus, the question of state prison officials' personal immunity from liability for the violation was never in issue. 42 U.S.C.A. § 1982.

George Strickler, New Orleans, La., for Hayes Williams.

George Strickler, New Orleans, La., for Arthur Mitchell.

J. Marvin Montgomery, Asst. Atty. Gen., Joseph P.

Macaluso, Jr., Baton Rouge, La., for defendants-appellees.

Appeals from the United States District Court for the Middle District of Louisiana.

Before CHARLES CLARK, Chief Judge, GOLDBERG and WILLIAMS, Circuit Judges.

GOLDBERG, Circuit Judge:

This is the latest chapter in the continuing saga of litigation concerning conditions at the Louisiana State Penitentiary at Angola, Louisiana. In *Williams v. Edwards*,[1] 547 F.2d 1206 (5th Cir. 1977), this Court upheld the imposition of broad injunctive relief intended to remedy the unconstitutional conditions at that facility. Now we are called upon to determine whether any of the defendants named in that action may be held personally liable for monetary damages. Specifically, we are asked whether, on this record, the defendant state officials have shown that they are entitled to an immunity from personal liability.

In passing upon this question, we confront competing legal imperatives: we must weigh the strong societal interest in compensating the victims of governmental misconduct against our policy of providing an immunity to officials who have acted in good faith and within the scope of their discretionary authority. Striking a balance

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[1] In 1975, this case was captioned *Williams v. McKeithen, et al.*, C.A. 71-98 (M.D.La.). In 1977, this Court dealt with the matter as *Williams v. Edwards*, 547 F.2d 1206, 1207 (5th Cir. 1977). In its August, 1980 order, the district court has once again captioned the case as *Williams v. McKeithen, et al.*, 495 F.Supp. 707. Now, the case comes to us as *Williams v. Treen*.

between these conflicting interests is particularly troubling in the context of a case involving prison administration. Although penal servitude may deprive one convicted of crime of liberty and other rights enjoyed by free citizens, courts now recognize that many constitutional protections accompany the convict in his imprisonment. However, we also recognize that officials charged with the operation of violatile prison institutions are faced with a difficult and often dangerous task. We must consider each of these legitimate concerns in an effort to provide a just resolution to this controversy.

I. *Procedural History*

This action was brought against an array of Louisiana state officials[2] on behalf of four Angola State Penitentiary inmates: Lazarus Joseph, Lee Stevenson, Arthur Mitchell, and Hayes Williams. The plaintiffs filed their complaint in 1971,[3] alleging that as the result of illegal conditions and practices countenanced by the defendant officials, the inmates had suffered numerous deprivations of their constitutional rights. Specifically, each of the plaintiffs claimed that a policy of racial segregation at Angola violated his right to equal protection secured by the Fourteenth Amendment, and that overall conditions at Angola constituted cruel and unusual punishment in violation of the Eighth Amendment. Plaintiff Mitchell claimed that on a specific occasion he

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[2] In their original complaint, the plaintiffs named the Governor of Louisiana, the Director of the Louisiana Department of Corrections, the Angola prison warden, the assistant and deputy wardens, and several security officers as defendants.

[3] The claim was filed with the U.S. District Court (M.D.La.) pursuant to 42 U.S.C. § 1983.

was denied adequate medical treatment, a deprivation which he characterized as cruel and unusual punishment and as a denial of his rights to due process.

In December of 1973, the District Court conducted an inquiry into overall conditions at Angola in order to determine the need for injunctive relief. Evidence and testimony brought forward in this 1973 proceeding provided a voluminous record detailing the hellish conditions at the prison. Based upon this evidence, U. S. District Judge E. Gordon West found that conditions at Angola "shock[ed] the conscience of any right thinking person" and "flagrantly violate[d] basic constitutional requirements as well as applicable state laws." He further found that "state authorities [were] either failing or refusing to take the necessary steps to correct these conditions." *Williams v. Edwards*, 547 F.2d 1206, 1209 (5th Cir. 1977). Accordingly, Judge West granted broad injunctive relief designed to improve overall conditions at the facility. *Williams v. McKeithen*, C.A. 71-98-(M.D.La., 1975). It was this 1975 order which we affirmed in *Williams v. Edwards, supra*.

The District Court did not consider the individual damage claims in its 1975 order. Instead, Judge West bifurcated the action, noting that the claims for monetary damages would be considered in a separate proceeding which was still yet to come.[4] Although the 1975 order

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[4] The plaintiffs originally sought both legal and equitable relief. However, the record indicates that during the early years of this epic litigation, the court's attention was focused solely upon the injunctive relief issues. In an order dated June 10, 1975, the District Judge stated that ". . . in accordance with the stipulation and con-

held out the merits of the individual damage claims, the record indicates that no further evidentiary hearing ever occurred. From 1971 until 1980, the plaintiffs' damage claims awaited adjudication.

Finally, on August 6, 1980, U.S. District Judge Frank J. Polozola[5] issued a ruling with respect to the individual damage claims. Citing to the Supreme Court's decision in *Procunier v. Navarette*, 434 U.S. 555, 98 S.Ct. 855, 55 L.Ed.2d 24 (1978), Judge Polozola held that insofar as the rights allegedly violated by the prison officials had not been "clearly established" at the times in question, the defendants were immune from personal liability. He therefore dismissed each of the damage claims.

The plaintiffs now appeal from the dismissal of their individual claims, arguing: (1) that the appeals of all four plaintiffs are properly before this Court, (2) that the trial court erred in finding the defendants immune from personal liability without first holding an evidentiary hearing in which the defendants would be required to assert and prove their entitlement to an immunity, and (3) that the defendants are in fact not entitled to an immunity because their conduct contravened law which was clearly established at the time of the violations.

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sent of all parties, the suit involving the individual tort claims of the plaintiffs *shall be* tried and decided by the U.S. Magistrate . . ." (emphasis added). Thus, as of 1975, the parties had stipulated to the fact that any trial on the merits of these damage claims lay in the future.

[5] This case was transferred from Judge West's to Judge Polozola's docket. Judge West has taken senior status.

II. *Appellate Jurisdiction*

All parties concede that plaintiffs Williams and Mitchell filed a timely notice of appeal under Fed.R. App.P., Rule 4(a), but that plaintiffs Stevenson and Joseph failed to file either a notice of appeal or a request for an extension of time to file. Stevenson and Joseph now urge this Court to allow their appeals despite their failure to comply with our filing requirements.

Rule 4(a) of the Fed.R.App.P. provides that "notice of appeal shall be filed with the clerk of the district court within 30 days after the date of entry of the judgment or order appealed from." This Court has consistently held that compliance with Rule 4(a) is a mandatory precondition to the exercise of jurisdiction by the appellate court. See, *Ryals v. Estelle*, 661 F.2d 904 (5th Cir. 1981); *Birl v. Estelle*, 660 F.2d 592 (5th Cir. 1981); *Bond v. Western Auto Supply*, 654 F.2d 302 (5th Cir. 1981); *Barksdale v. Blackburn*, 647 F.2d 630 (5th Cir. 1981); *Sanchez v. Board of Regents*, 625 F.2d 521, 522 n.1 (5th Cir. 1980).

[1] The import of Rule 4(a) for this case is all too clear. Much as we regret to dismiss a plaintiff's appeal on "technical" grounds, the law in this area permits no other result. In failing to file a notice of appeal, plaintiffs Stevenson and Joseph forfeit their opportunity to seek review of the judgments entered below. Therefore, the appeals of plaintiffs Stevenson and Joseph must be dismissed.

III. *The Qualified Immunity Defense*

In finding the defendant prison officials were immune from personal liability, the District Court relied upon the Supreme Court's opinion in *Procunier v.*

Navarette, 434 U.S. 555, 98 S.Ct. 855, 55 L.Ed.2d 24 (1978). We are now asked to decide whether *on this record* the defendant officials have shown that they are entitled to the protections of a *Procunier* immunity.

[2,3] A qualified immunity can only be claimed by those officials whose positions require the exercise of official discretion. *Jackson v. State of Mississippi*, 644 F.2d 1142, 1145 (5th Cir. 1981); *Douthit v. Jones*, 619 F.2d 527, 533 (5th Cir. 1980); *Cruz v. Beto*, 603 F.2d 1178, 1184 (5th Cir. 1979). To claim the immunity, an official must show that the allegedly wrongful actions " . . . were undertaken pursuant to the performance of his duties and within the scope of his discretionary authority." *Barker v. Norman*, 651 F.2d 1107, 1124-1125 (5th Cir. 1981).

Once it has been established that a 1983 defendant was acting within the scope of his discretionary authority, *Procunier v. Navarette, supra*, sets forth a two prong standard to be used in determining whether the defendant is immune from liability. This dual test calls for both an *objective* and *subjective* evaluation of official conduct. *Barker v. Norman*, 651 F.2d 1107, 1125-1127 (5th Cir. 1981); *Clanton v. New Orleans Parish School Board*, 649 F.2d 1084, 1100 (5th Cir. 1981); *Dilmore v. Stubbs*, 636 F.2d 966, 968 (5th Cir. 1981); *Bryan v. Jones*, 530 F.2d 1210, 1214 (5th Cir. 1976) *(en banc)*. Under the subjective portion of the *Procunier* test, an official forfeits his immunity when he acts "with the malicious intent to cause a deprivation of constitutional rights or other injury." *Dilmore v. Stubbs*, 636 F.2d 966, 968 (5th Cir. 1981). Under the objective standard, "[an]

official, even if he is acting in the sincere subjective belief that he is doing right, loses his cloak of qualified immunity if his actions contravene 'settled indisputable' law." *Bogard v. Cook*, 586 F.2d 399, 411 (5th Cir. 1978). Thus, *Procunier* teaches us that ". . . it is not unfair to hold liable the official who knows or should know he is acting outside the law." *Butz v. Economou*, 438 U.S. 478, 506, 98 S.Ct. 2894, 2910, 57 L.Ed.2d 895, 916 (1978).

Finally, as an added fillip to the jurisprudence of *Procunier* immunities, the Supreme Court has recently made it clear that defendant officials must bear the burden of pleading their qualified immunity as an affirmative defense. *Gomez v. Toledo*, 446 U.S. 635, 100 S.Ct. 1920, 64 L.Ed.2d 572 (1980); *Dennis v. Sparks*, 449 U.S. 24, 29-30, 101 S.Ct. 183, 187, 66 L.Ed.2d 185 (1980).

[4,5] In sum, a qualified immunity is only available to those officials who affirmatively assert the defense and prove that they were acting within the scope of their discretionary authority. *Barker v. Norman*, 651 F.2d 1107, 1120 (5th Cir. 1981). This affirmative defense is unavailable to those who either act with malice or who contravene clearly established law. *Procunier v. Navarette, supra; Wood v. Strickland*, 420 U.S. 308, 95 S.Ct. 992, 43 L.Ed.2d 214 (1975).

IV. *The Need for Findings of Fact to Sustain an Immunity*

The appellants contend that the District Court erred in dismissing their damage claims without first holding an evidentiary hearing. Upon carefully reviewing the record in this case, we find that the District Court did in fact dismiss the plaintiffs' damage claims

without first developing the factual record necessary to support the dismissal. This was error for the reasons set forth below.

Qualified immunity is an affirmative defense.[6] The immunity is not automatically available to every 1983 defendant merely by virtue of his status as a government employee. Rather, the defense protects only those who can demonstrate both that their positions required the exercise of official discretion, and that they have acted within the scope of that discretion. *Barker v. Norman*, *supra* at 1124-1125; *Jackson v. State of Mississippi*,

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[6] In *Gomez v. Toledo*, 446 U.S. 635, 100 S.Ct. 1920, 64 L.Ed.2d 572 (1980), the Supreme Court held that qualified immunity from personal liability under Section 1983 is an *affirmative defense* which must be raised by the defendant officials. Thus, it is the defendant who bears the burden of pleading and proving his entitlement to a qualified immunity. *Dennis v. Sparks*, 449 U.S. 24, 29, 101 S.Ct. 183, 187, 66 L.Ed.2d 185 (1980); *Barker v. Norman*, 651 F.2d 1107, 1120 (5th Cir. 1981); *Barrett v. Thomas*, 649 F.2d 1193, 1201 (5th Cir. 1981); *Jackson v. State of Mississippi*, 644 F.2d 1142, 1145 (1981); *Williams v. Rhoden*, 629 F.2d 1099, 1103 (1980); *Douthit v. Jones*, 619 F.2d 527, 533-534 (1980). See generally, Kathryn D. Sowle, "Qualified Immunity in Section 1983 Cases: The Unresolved Issues of the Conditions for its Use and the Burden of Persuasion," 55 Tulane L.Rev. 326, 393-414 (1981). We have searched the record in vain for an indication that the defendant officials themselves ever asserted the immunity defense. We have examined each of the many answers, amended answers, and motions filed by the defendants over the course of this litigation and we find no mention of a claim to an immunity. We therefore note that the district court compounded its error of acting without a hearing when it dismissed the plaintiffs' damage claims on the grounds of an affirmative defense (qualified immunity) which was never raised by the defendants themselves. However, insofar as the appellants have not made this argument on appeal, we do not rely upon it in reaching our decision.

supra at 1145; *Douthit v. Jones, supra* at 533; *Cruz v. Beto, supra* at 1184.

[6] In order to grant a qualified immunity, a district court must find that the defendant officials' position required the exercise of discretion and that his allegedly tortious conduct was undertaken within the scope of his discretionary authority. These issues involve questions of *fact* which must be determined through the use of appropriate fact-finding procedures; i.e. summary judgment proceedings or an evidentiary hearing.[7]

In the instant case, the District Court held that *all* the defendants—from the individual jailers to the Governor—were immune from personal liability.[8] The trial court reached this conclusion without ever explicitly

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[7] "This Court has taken a dim view of dismissing a plaintiff's claim on the grounds of . . . qualified immunity without conducting a hearing." *Tarter v. Hury*, 646 F.2d 1010, 1012, n. 3 (5th Cir. 1981). ". . . dismissal without a hearing is seldom appropriate when the defense of immunity is pled . . ." *Slavin v. Curry*, 574 F.2d 1256, 1262 (5th Cir. 1978). In a recent case involving the question of official immunities, this Court stated, "It must be determined whether the defendant, as a public official, acted within the scope of his discretionary authority. To establish this, there must be more than a bald assertion by the defendant that their complained of actions were undertaken pursuant to the performance of his duties and within the scope of this discretionary authority; there must be a showing by competent summary judgment materials of objective circumstances that would compel that conclusion." *Barker v. Norman, supra* at 1107. In the instant case we find nothing in the record to show that the defendants ever even made a "bald assertion" to support a finding of qualified immunity.

[8] This Court has stated that, "If the doctrine of qualified immunity is to have a real meaning, some distinction must be drawn between the defense accorded [a] policeman . . . and the director of a statewide prison system." *Cruz v. Beto, supra* at 1184.

finding that these state employees exercised discretionary authority, and without finding that the actions here in question were undertaken within the scope of that authority. In fact, the order of dismissal fails to even identify the supposedly immune defendants.[9]

[7] The law controlling this aspect of the case is clear. Qualified immunity must be asserted by the defendants. *Gomez v. Toledo, supra.* To claim the immunity, a defendant must prove that his position entailed the exercise of discretionary authority and that he acted within the scope of that authority. *Barker v. Norman, supra.* No such findings were ever made in this case. Therefore, we conclude that the District Court erred in dismissing this action without first developing the factual record necessary to support a finding that each of these defendants were entitled to a qualified immunity.

V. *Damage Claims and the Qualified Immunity Defense: Was There a Violation of Clearly Established Law?*

[8] Qualified immunity is unavailable to those 1983 defendants who violate "clearly established" law.[10] *Pro-*

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[9] Over the course of these proceedings, it appears that some of the original defendants have been dropped from this action. Thus, there is considerable confusion as to the identity of the defendants still in this case in 1980, the time when the dismissals were finally entered. We note that several of those who now seem to be named as defendants (for example, Governor Treen) may be entitled to a dismissal—not because of an immunity, but because these individuals cannot be held personally liable for the actions of their predecessors.

[10] In fact, plaintiffs can rebut the qualified immunity defense by showing *either* that the defendants violated "clearly established" law *or* that they acted with malice ("bad faith"). *Procunier v.*

cunier v. Navarette, supra; Wood v. Strickland, supra. Appellants argue that the defendants did indeed contravene "clearly established" law in depriving the Angola inmates of safe and sanitary conditions of confinement, adequate medical care, and racially integrated prison housing. Therefore, the appellants have asked this Court to find that the defendant officials are not entitled to the protections of a qualified immunity.

In order to determine whether upon remand these defendants are to be cloaked by an immunity, we will examine each of the plaintiffs' substantive claims. The focus of our inquiry on each claim will be limited to one question: was there a violation of *clearly established* law?

A. *Unsafe and Unsanitary Conditions of Confinement*

In an earlier incarnation of this case, we affirmed a finding that conditions at Angola "shock[ed] the conscience" and "flagrantly violated basic constitutional requirements as well as applicable state laws." *Williams v. Edwards*, 547 F.2d 1206, 1208 (5th Cir. 1977). Now we are called upon to determine whether those conditions violated "clearly established" law. To this end, we must

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Navarette, supra. In its order of dismissal, the district court noted that the defendant officials had not acted in "bad faith." Once again the trial court did not indicate a factual basis for this finding. Apparently, the court inferred that since there had been no allegation of "bad faith," the plaintiffs had conceded the defendants' "good faith." On this record, such an inference is impermissible. Section 1983 plaintiffs need not allege "bad faith" until an official defendant actually asserts a claim to an immunity, *Gomez v. Toledo, supra*, and in this case, no such claim was asserted.

look to the law as it existed at the time of the alleged violations, i.e., up to and including 1971.

In poring through the volumes of the Federal Reporter, we have found at least one pre-1971 Fifth Circuit opinion which suggests that conditions such as those at Angola might violate the constitutional rights of inmates. In *Sinclair v. Henderson*, 435 F.2d 125 (5th Cir. 1970), an inmate at the Louisiana State Penitentiary alleged that the conditions of his confinement were so unsafe and unsanitary as to constitute extreme maltreatment and a violation of constitutionally protected rights. In *Sinclair*, this Court held that the plaintiff had indeed set forth a valid claim and we cited to several opinions which also held that an inmate's right to safe, humane and sanitary conditions of confinement had a constitutional dimension.[11]

Sinclair was directed specifically to conditions in the Louisiana prisons, but it was a brief opinion in which we merely suggested that conditions such as those at Angola *might* violate constitutionally protected rights. *Sinclair* was an early example, a mere hint of what would only later become a clear jurisprudential trend. Therefore, we would be reluctant to find that *Sinclair* in

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[11] E.g., *Holt v. Sarver*, 309 F.Supp. 362, 372 (E.D.Ark.1970) ["confinement within a given institution may amount to cruel and unusual punishment prohibited by the Constitution where the confinement is characterized by conditions and practices so bad as to be shocking to the conscience . . ."]; *Jordan v. Fitzharris*, 257 F.Supp. 674, 680 (N.D.Cal.1966) [courts must intervene when ". . . the responsible prison authorities . . . have abandoned elemental concepts of decency by permitting conditions to prevail of a shocking and debased nature."]

and of itself "clearly established" an inmate's right to safe and sanitary conditions of confinement.

However, even if the constitutional dimensions of an inmate's rights to safe and sanitary prison conditions had not yet been clearly established in 1971, we should recognize that the decisions to be found in the Federal Reporter are not the only source of law governing the actions of state prison officials. We must consider the fact that the District Court specifically found that conditions at the facility violated applicable state fire, safety, and health regulations.[12] We are therefore confronted with what appears to be a question of first impression in this Circuit. We must determine whether 1983 defendants are entitled to the protections of a qualified immunity when there has been a violation of clearly established *state* law.

In treating this question, it is important to consider the vitally important compensatory aspects of the § 1983 cause of action as well as the policy objectives which prompted the courts to develop the qualified immunity defense. Congress enacted 42 U.S.C. § 1983 so as to provide compensation for citizens who suffer deprivations of rights secured by federal law. "The Act imposes liability upon every person who, under color of state law or custom, 'subjects or causes to be subjected' any citi-

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[12] In *Williams v. Edwards, supra,* we affirmed the district court's finding that conditions at Angola, specifically the defendants' "failure to remove electrical, fire, safety, and health hazards at the prison . . . constitute[d] a clear and direct violation of *Louisiana's* laws and regulations." *Williams v. McKeithen,* C.A. 71-98 (M.D.La.1975) (emphasis added).

zen of the United States . . . 'to the deprivation of rights, privileges, or immunities secured by the Constitution and laws.' " *Owen v. City of Independence*, 445 U.S. 622, 635, 100 S.Ct. 1398, 1407, 63 L.Ed.2d 673, 684 (1980).

The statute itself does not explicitly mention an immunity defense "§ 1983 creates a species of tort liability that on its face admits of no immunities." *Imbler v. Pachtman*, 424 U.S. 409, 417, 96 S.Ct. 984, 988, 47 L.Ed.2d 128 (1976). However, the Supreme Court has chosen to construe § 1983 as incorporating and allowing for a qualified immunity, a defense which the Court read into the statute so that public officials would be free to exercise a measure of discretion without fear of exposure to personal liability. *Procunier v. Navarette*, *supra*, 434 U.S. at 562, 98 S.Ct. at 859; *Wood v. Strickland*, *supra*, 420 U.S. at 321, 95 S.Ct. at 1000; *Scheuer v. Rhodes*, 416 U.S. 232, 241, 94 S.Ct. 1683, 1688, 40 L.Ed.2d 90 (1974).

The Supreme Court has been careful to limit the immunities it has created, noting that its ". . . decisions conferring qualified immunities are not to be read as derogating the important societal interest in compensating the innocent victim of governmental misconduct." *Owen v. City of Independence*, 445 U.S. 622, 650, 100 S.Ct. 1398, 1415, 63 L.Ed.2d 673, 693-694 (1980). *Owen* reminds us that when an official immunity is granted, a *victim* of unconstitutional "state action" is left uncompensated. Therefore, it is important to limit the immunity defense to those cases where a defendant has acted in reasonable good faith and within the scope of his official discretion. Where the defendant official has *not*

acted in reasonable good faith, he is not entitled to an immunity, for ". . . it is not unfair to hold liable the official . . . who should know he is acting outside the law." *Butz v. Economou, supra,* 438 U.S. at 506, 98 S.Ct. at 2910, 57 L.Ed.2d at 916.

In this case, we are asked whether an official who violates clearly established *state* law can be said to have acted in reasonable good faith. This Court's many opinions discussing the qualified immunity defense have made it clear that where an official's belief in the lawfulness of his actions is unreasonable, qualified immunity is not available. E.g. *Baker v. Norman, supra; Clanton v. New Orleans Parish School Board, supra; Dilmore v. Stubbs, supra; Bogard v. Cook, supra.* "[E]ven an official who acts in the sincere subjective belief that his actions are proper will lose his qualified immunity if those actions contravene 'settled, indisputable law.' " *Dilmore v. Stubbs, supra* at 968.

[9, 10] We believe that prison ". . . officials are charged with knowledge of their own prison regulations." *Chavis v. Rowe,* 643 F.2d 1281, 1289 (7th Cir. 1981) and that they "may not take solace in ostrichism." *Id.* If an official's conduct contravenes his own state's explicit and clearly established regulations, a subjective belief in the lawfulness of his action is *per se* unreasonable. We therefore find that insofar as the conditions of confinement at Angola contravened clearly established state law, the responsible officials' belief in the lawfulness of those conditions was *per se* unreasonable and the defendants are not entitled to claim an immunity based

on reasonable good faith.[13] To hold otherwise would be to encourage official ignorance of the law.

[11-13] We of course recognize that a § 1983 plaintiff must allege a deprivation of a federally protected right in order to set forth a *prima facie* case, *Maine v. Thiboutot*, 448 U.S. 1, 100 S.Ct. 2502, 65 L.Ed.2d 555 (1980); violation of state law alone does not give rise to a cause of action under § 1983. *Bills v. Henderson*, 631 F.2d 1287 (6th Cir. 1980). We believe that our conclusion regarding the immunity defense in this case is entirely consistent with this well established principle. The § 1983 cause of action in this case is based upon the fact that the federal constitutional rights of these inmates were violated.[14] At this juncture, the only question before the court is whether the defendant officials are entitled to the special protections of a qualified immunity. We hold that when a state official violates the constitutional rights of a citizen, and in so doing also violates clearly established state law which enforces those rights, the defendant official is not entitled to an immunity which is based upon reasonable good faith.[15]

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[13] We note that a recent Seventh Circuit opinion, *Chavis v. Rowe*, 643 F.2d 1281, 1289 (7th Cir. 1981), suggests that prison officials who act in violation of explicit state regulations are not entitled to a *Procunier* immunity. Similarly in *Williams v. Board of Regents*, 629 F.2d 993, 1000 (5th Cir. 1980), another panel of this Court stated that an official who takes action which is inconsistent with state statutes or regulations loses his immunity.

[14] The District Court found that the conditions of confinement at Angola violated the inmate's federal constitutional rights. We affirmed this finding in *Williams v. Edwards*, *supra*.

[15] Of course, while the defendant officials are not entitled to an

B. *Medical Care at Angola*

In his original complaint, plaintiff Arthur Mitchell contended that the general level of health care and medical treatment available to prisoners at Angola was so deficient as to constitute a violation of his constitutional rights. More importantly, Mitchell alleged that on a specific occasion he had been deliberately denied necessary medication while isolated in solitary confinement.

The parties have stipulated to the fact that at the times here in question, Mitchell suffered from sickle cell anemia and that he was taking medication prescribed to treat the illness. The Appellees concede that prison officials knew of the plaintiff's illness and of his need for medication. They also concede that in the spring of 1970, the plaintiff was confined to solitary confinement for a period of twelve days, that he was deprived of his medication, and that he then became seriously ill, requiring hospitalization, medication, and several blood transfusions. *In toto*, Mitchell has alleged that prison officials refused his requests for medical attention and deliber-

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immunity, we do not mean to suggest that upon remand the defendants must be found liable. In this case, there is a host of defendants, ranging from individual guards to the Governor. In order to establish the personal liability of a given defendant, the plaintiffs must show that a particular official's actions (or inaction) *caused* a violation of the plaintiff's rights. See, *Reimer v. Smith*, 663 F.2d 1316 (5th Cir. 1981) and "a general allegation of administrative negligence fails to state a constitutional claim cognizable under Section 1983." *Polk County, et al. v. Dobson*, ___ U.S. ___, ___, 102 S.Ct. 445, 454, 70 L.Ed.2d 509 (1981). Thus, upon remand the plaintiffs will still bear the considerable burden of establishing the personal liability of an individual defendant for injuries suffered as the result of overall conditions at Angola.

ately denied him vital medication and access to a physician, knowing that this would make him gravely ill.

[14] Mitchell sought to recover monetary damages from one or more of the named official defendants, claiming that this deliberate denial of vital medication subjected him to cruel and unusual punishment in violation of his rights to Due Process.[16] However, Judge Polozola dismissed each of Mitchell's claims, ruling that the rights allegedly violated by the defendants had not yet been clearly established at the times in question and that the defendants were therefore entitled to a qualified immunity.

In part, we agree with the District Court. The establishment of an inmate's right to conditions of confinement which include reasonable medical care and treatment is a relatively recent development in our jurisprudence. At the time this suit was first brought, it was not clear what minimum level of prison health care was constitutionally required. This was the subject of ongoing litigation. See, e.g., *Newman v. State of Alabama*, 503 F.2d 1320 (1974). We therefore must agree that an inmate's constitutional right to a reasonable level of general health care had not yet been clearly established in 1971.

However, the plaintiff in this case alleged more than a mere failure to provide generally adequate medical

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[16] The federal constitutional prohibition against the infliction of cruel and unusual punishment is binding on the states through the Due Process Clause of the 14th Amendment, *Robinson v. California*, 370 U.S. 660, 82 S.Ct. 1417, 8 L.Ed.2d 758 (1962), and is enforced against state prison officials under 42 U.S.C. § 1983.

services to the inmate population. Mitchell contended that on a specific occasion, prison officials deliberately withheld vital medication from him, knowing that he suffered from a serious and chronic disease, and knowing that deprivation of the medication would make him dangerously ill. As a result of these actions, the plaintiff did become seriously ill, suffering the kind of unnecessary physical pain and suffering which for nearly two centuries has been the gravaman of cruel and unusual punishment. See, *Gregg v. Georgia*, 428 U.S. 153, 169-173, 96 S.Ct. 2909, 2923-2925, 49 L.Ed.2d 859 (1976); *In re Kemmier*, 136 U.S. 436, 447, 10 S.Ct. 930, 933, 34 L.Ed. 519 (1890); *Wilkerson v. Utah*, 99 U.S. 130, 136, 25 L.Ed. 345 (1879); see also, Granucci, "Nor Cruel and Unusual Punishment Inflicted: The Original Meaning," 57 Calif.L.Rev. 839 (1969).

[15, 16] It is clear that a state official who knowingly deprives a prisoner of vital medical treatment violates constitutionally protected rights. *Estelle v. Gamble*, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976). This is neither a recent nor a novel proposition of constitutional law. If we review the case law as it existed at the time of the violation, we find that this right was already "clearly established." Courts consistently held that while mere negligence in giving or failing to supply medical treatment would not support an action under Section 1983, a knowing and willful failure to provide or permit a prisoner access to needed medical care would violate clearly established constitutional rights. See, e.g., *Martinez v. Mancusi*, 443 F.2d 921, 923 (2nd Cir. 1970); *Cates v. Ciccone*, 442 F.2d 926 (8th Cir 1970); U.S. *ex rel Hyde v.*

McGinnis, 429 F.2d 864 (2nd Cir. 1970); *Church v. Hegstrom*, 416 F.2d 449, 451 (2nd Cir. 1969); *Blanks v. Cunningham*, 409 F.2d 220, 221 (1969); *Riley v. Rhay*, 407 F.2d 496, 497 (9th Cir. 1969); *Shack v. State of Florida*, 391 F.2d 593 (5th Cir. 1968); *Wright v. McMann*, 387 F.2d 519 (2nd Cir. 1967); *Stiltner v. Rhay*, 371 F.2d 420, 421 n. 3 (9th Cir. 1967); *Edwards v. Duncan*, 355 F.2d 993, 934 (4th Cir. 1966); *Hirons v. Director of Patuxent Institution*, 351 F.2d 613, 614 (4th Cir. 1965); *U. S. ex rel Knight v. Ragen*, 337 F.2d 425 (7th Cir. 1964); *Hughes v. Noble*, 295 F.2d 495, 496 (5th Cir. 1961); *Coleman v. Johnston*, 247 F.2d 273 (7th Cir. 1957). See generally, Note, "Medical Rights of Prisoners," 72 U.Chi.L.Rev. 705 (1975). Arthur Mitchell alleges that one or more of the defendant officials knowingly denied him desperately needed medication. Such conduct, if proved upon remand, would constitute a violation of clearly established rights. Accordingly, the responsible officials would not be entitled to a qualified immunity from liability arising from his incident.

C. *Racial Segregation at Angola: The Damage Claim That Never Was*

There is some confusion as to precisely which damage claims were dismissed by the District Court in its August 10, 1980 order. All parties to this appeal tell us that the District Court dismissed a claim for monetary damages arising from the unlawful policy of racial segregation enforced at Angola. The appellants contend that because the right to be free from state policies of racial segregation had been "clearly established" at the times here in question, the district court erred in dismissing

this claim on grounds of immunity. For their part, appellees conceed that a policy of racial segregation was maintained at Angola, but argue that this policy did not violate clearly established rights. We would have no difficulty in resolving this question as it is presented to us by the parties. We believe that the right to be free from general policies of racial segregation in prison housing and administration was clearly established in the opinions rendered by Judge Johnson in *Washington v. Lee*, 263 F.Supp. 327 (M.D.Ala.1966), and the Supreme Court's per curiam affirmance in *Lee v. Washington*, 390 U.S. 333, 88 S.Ct. 994, 19 L.Ed.2d 1212 (1968).[17]

[17] Upon examining the District Court's order however, we see that the Court in fact did *not* dismiss a

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[17] "A state may not constitutionally require segregation of public facilities." *Johnson v. State of Virginia*, 373 U.S. 61, 62 [83 S.Ct. 1053, 1054, 10 L.Ed.2d 195] (1963). "Since *Brown v. Board of Education*, 347 U.S. 483 [74 S.Ct. 686, 98 L.Ed. 873] (1954), and the numerous cases implementing that decision, it has been unmistakably clear that racial discrimination by governmental authorities in the use of public facilities cannot be tolerated." *Washington v. Lee*, 263 F.Supp. 327, 331 (M.D.Ala.1966). "The principle extends to all institutions controlled or operated by the State." *Singleton v. Board of Commissioners*, 356 F.2d 771, 772 (5th Cir. 1966).

Prior to 1968, there may have been some lingering question as to whether the principles enunciated by *Brown v. Board of Education*, *supra*; *Johnson v. Virginia*, *supra*; and *Singleton v. Board of Commissioners*, *supra*, would be applied in the context of state prison housing and administration. However, this question was clearly and authoritatively settled when the Supreme Court affirmed the ruling of a special three-judge federal panel ordering the desegregation of Alabama's penal facilities. *Lee v. Washington*, 390 U.S. 333, 88 S.Ct. 994, 19 L.Ed.2d 1212 (1968). We note that the policy of racial segregation successfully challenged in that 1968 case was virtually identical to the policy which these defendants continued to carry on in Louisiana until 1973.

racial segregation damage claim. There is a simple reason for this. Our review of the record indicates that a damage claim for racial segregation was never asserted. In their original and amended complaints, plaintiffs merely set forth a claim for injunctive relief to remedy the policy of racial segregation then enforced at Angola. Thus, while we find that the plaintiffs in this case were indeed the victims of a clearly illegal policy of racial segregation, we must conclude that insofar as the plaintiffs themselves never sought monetary compensation on this claim, they cannot now recover damages for this violation of their rights.

VI. *Conclusion*

Official immunities, however qualified, modified, or prefixed, must be granted sparingly and with consummate care. The question of when, where, and under what conditions an immunity is to be granted is a challenge which we as judges have tried to hammer out on the anvil of history, attempting to forge rules which will afford compensation to the victims of official wrongdoing while at the same time tempering our judgment with an appreciation for the difficult decisions which public officials often confront.

The statute books are silent as to the proper scope of offical immunity. In creating the § 1983 cause of action, Congress provided no maps, no definitional boundaries or routing to guide us in our struggle with the immunity question. Thus, the concept of immunity is largely judge-made and embraces within its contours much pragmatic terrain.

Whenever we discuss immunities, we are operating

within the realm of competing interests and conflicting imperatives. While we wish to compensate the victims of official misconduct, we also need to provide some protection to those state officials who exercise their discretionary authority in good faith. While we stand ready to vindicate the constitutional rights of all our citizens including those in our penalogical institutions, we must also be sensitive to the arduous tasks facing the officials who must maintain order and discipline in our prisons; officials who often work within the confines of limited budgets and intractable bureaucracies.

If immunities were unlimited, we would find ourselves subject to a government of men and not of law. However, without the doctrine of qualified immunity, public service would entail exposure to prohibitive liability. Therefore, we must strike a balance between competing imperatives.

It is a primary object of sound jurisprudence in a civilized society that courts should be even handed in their dispensation of justice regardless of rank, badges, or insignia of office. However, the qualified immunity defense " . . . is not a badge or emolument of exalted office, but an expression of a policy designed to aid in the effective functioning of government." *Barr v. Matteo*, 360 U.S. 564, 572-573, 79 S.Ct. 1335, 1340, 3 L.Ed.2d 1434 (1959). As our courts have come to recognize a broad spectrum of prisoners' rights, state officials have had to make their behavior conform to newly evolving standards. We cannot expect our prison officials to be so prescient as to forecast those decisions which we as judges find it so very difficult to make. It would be unfair

to hold a state official liable for actions undertaken in good faith and at a time when the official could not yet have known that his conduct was unlawful.

In recognition of these principles, the Supreme Court has given us an explicit formula for the serum which will immunize public officials. It is now clear that qualified immunity is only available to those who assert the defense and who can show that they have acted within the scope of their official discretion. The immunity is unavailable to those who act with malice or who violate clearly established law.

Applying this formula to the instant case, we find that the District Court erred in dismissing Hayes Williams' and Arthur Mitchell's § 1983 damage claims on the grounds of qualified immunity. First, the District Court should have not dismissed these claims when the factual record had not yet been sufficiently developed to support a finding of qualified immunity. Specifically, the defendants failed to show that they each held positions which entailed the exercise of official discretion and that they each acted within the scope of that discretion. Second, insofar as these officials are alleged to have acted in violation of law which was clearly established at the times here in question, the defendants are not entitled to the protections afforded by a qualified immunity.

With regard to the claim involving overall conditions of confinement, we have found that insofar as these conditions violated clearly established state law, the defendants are not entitled to the protections of a qualified immunity. With regard to the claim involving inadequate medical care for the *general* inmate population, we agree

with the District Court and find that the precise dimensions of this right were *not* yet clearly established at the times here in question. However, with respect to plaintiff Mitchell's individual claim that prison officials deliberately withheld vital medication from him on a specific occasion, we reach a different conclusion. If the responsible officials deliberately withheld vital medication, they violated rights which were clearly established at the time in question. Therefore, on this claim, a qualified immunity defense would be unavailable. Finally, with regard to the "claims" involving racial segregation, we find that because the plaintiffs never sought monetary damages, the question of immunity from personal liability for this claim was never in issue.

For each of these reasons, the judgments dismissing the damage claims of plaintiffs Arthur Mitchell and Hayes Williams must be and are hereby REVERSED and their cases REMANDED for further proceedings in accordance with this opinion. For the reasons we have set forth in Section II of this decision, the purported appeals of plaintiffs Lee Stevenson and Lazarus Joseph are hereby DISMISSED for want of jurisdiction.

APPENDIX C

HAYES WILLIAMS ET AL.,
Plaintiffs-Appellees,

v.

EDWIN EDWARDS, GOVERNOR OF THE STATE OF LOUISIANA, ET AL.,
Defendants-Appellants.

Nos. 75-2792, 75-3883.

United States Court of Appeals,
Fifth Circuit.

Feb. 15, 1977.

Rehearing Denied March 15, 1977.

Officials of the State of Louisiana appealed from a decision of the United States District Court for the Middle District of Louisiana at Baton Rouge, E. Gordon West, J., holding that prison conditions at the Louisiana State Penitentiary at Angola violated the Constitution of the United States and certain laws of the State of Louisiana, and from the district court's order that if the prison is to continue in operation, it must be done constitutionally. The Court of Appeals, Ainsworth, Circuit Judge, held, inter alia, that the Eleventh Amendment did not bar the relief granted by the trial court, that the trial court was correct in concluding that the totality of conditions at Angola violated the Eighth Amendment, and that the relief ordered by the trial court was proper.

Affirmed and remanded for further proceedings.

1. Federal Courts Key 994

It was not necessary that three-judge court be convened to review decision of district court finding that

conditions in Louisiana prison constituted cruel and unusual punishment and requiring that prison be operated constitutionally; such decision did not operate so as to enjoin Louisiana appropriations statute and Louisiana prisoner commitment statute. LSA-R.S. 15:-824; 28 U.S.C.A. § 2281; West's F.S.A. § 839.21.

2. Criminal Law Key 1213

Evidence supported trial courts finding that totality of conditions at Louisiana State Penitentiary at Angola constituted cruel and unusual punishment. U.S.C.A. Const. Amends. 8, 14.

3. Prisons Key 4

Federal courts employ policy of minimum intrusion into affairs of state prison administration, and state prison officials enjoy wide discretion in operation of state penal institutions; such defense will be tendered, however, only as to necessary or essential concomitants of incarceration, and policy of judicial restraint will not encompass any failure to take cognizance of valid constitutional claims. U.S.C.A.Const. Amends. 8, 14.

4. Criminal Law Key 1213

Constitutional limitations on state prison operation include cruel and unusual punishment of Eighth Amendment. U.S.C.A.Const. Amend. 8.

5. Criminal Law Key 1213

Prohibition against cruel and unusual punishment is not limited to specific acts directed at selected individuals, but is equally pertinent to general conditions of confinement that may prevail at prison. U.S.C.A.Const. Amend. 8.

6. Federal Courts Key 268

Despite provisions of Eleventh Amendment, district court judge had authority to enter order requiring increased inmate safety measures and enhanced medical facilities at state prison where such order did not require spending of funds but required only that, if state continued to operate prison, it was required to do so in accordance with Constitution and laws of the United States and of state itself. U.S.C.A.Const. Amend. 11.

7. Federal Courts Key 268
Prisons Key 4

It is within authority of federal district judge to order that constitutional violations be rectified if state prison is to remain open, and such relief is not barred by Eleventh Amendment. U.S.C.A.Const. Amend. 11.

8. Prisons Key 4

Lack of funds or authority over funds does not justify state's operating prison in unconstitutional manner.

9. Federal Courts Key 268

Federal district court's order requiring that state prison be operated in constitutional manner was not unlawful under Eleventh Amendment despite prison authorities' contention that they were "unable personally" to comply with portions of order potentially requiring expenditure of "large amounts of funds." U.S.C.A. Const. Amend. 11.

10. Federal Courts Key 951

On remand from appeal by state prison authorities from federal district court's decision which, inter alia, required that 950 prison guards be employed for inmate

population of 3,900 persons, it would be necessary to reopen proceedings for determination of number of guards necessary in light of fact that inmate population had declined to about 2,640 persons.

11. Prisons Key 4

Federal district court acted properly, after finding that conditions at state prison constituted cruel and unusual punishment, in requiring presence of two guards in open dormitories at all times as means of increasing control of homosexuality and weapons possession by inmates.

12. Prisons Key 4

Federal district court acted properly, in proceeding in which it determined that conditions at state prison constituted cruel and inhuman punishment, in referring to state's own published sanitation and fire code standards to determine whether conditions at prison met minimal standards for human habitation.

13. Federal Courts Key 951

On remand after appeal of district court's order finding conditions at state prison to constitute cruel and unusual punishment, trial court would be required to make more complete record on issue of overcrowding and to recompute proper inmate population at prison.

14. Criminal Law Key 1213

Evidence supported trial court's finding that "medical care delivery system" at Louisiana State Penitentiary at Angola was so deficient as to amount to cruel and unusual punishment. U.S.C.A.Const. Amends. 8, 14.

Stanford O. Bardwell, Jr., Asst. Atty. Gen., William J. Guste, Jr., Atty. Gen., Baton Rouge, La., for defendants-appellants.

David L. Morgan, Jr., Luke J. Fontana, Jr., New Orleans, La., for plaintiffs-appellees in Nos. 75-2792 and 75-3883.

David J. Vanderhoof, Dept. of Justice, Washington, D.C., Douglas M. Gonzales, U.S. Atty., Baton Rouge, La., for plaintiffs-appellees in No. 75-2792.

Jessica Dunsay Silver, Dept. of Justice, Brian K. Landsberg, Washington, D.C., for amicus curiae.

Appeals from the United States District Court for the Middle District of Louisiana.

Before COLEMAN, AINSWORTH and INGRAHAM, Circuit Judges.

AINSWORTH, Circuit Judge:

This is an appeal from a District Court decision that prisoner conditions at the Louisiana State Penitentiary at Angola violate the Constitution of the United States and certain laws of the State of Louisiana, and from its order that if the prison is to continue in operation it must be done constitutionally. The court ordered that certain specified and detailed relief, "immediate," "intermediate," and "long-range," be granted "to insure that if the State of Louisiana continues to operate . . . [the Angola Penitentiary], it does so in accordance with the Constitution and laws of the United States of America and in accordance with the Constitution and laws of the State of Louisiana." We affirm, but remand for further proceedings in accordance with this opinion.

This case originated when four Angola inmates filed actions in 1973 pursuant to 42 U.S.C. §§ 1981 and 1983, naming as defendants the Governor of Louisiana and the Warden of Angola, as well as other Louisiana state officials.[1] In their original complaint and amendments thereto the inmates alleged, among other things, that discrimination against minority inmates was practiced at Angola; that conditions at the prison violated the eighth and fourteenth amendment rights of the prison population as a whole; and that conditions at the prison violated the state fire and sanitation codes.

After the suit was filed the United States intervened on the issue of racial discrimination. Shortly thereafter the District Judge requested the United States to participate as amicus curiae on the other issues as well. The case was heard in December 1973 before a United States Magistrate acting as Special Master. Following unsuccessful attempts to resolve the cause by consent judgment the Special Master submitted his report to the District Court on April 28, 1975. Objections to the report were filed by the parties and heard by the District Judge on May 28, 1975. On June 19, 1975, the District Judge adopted the report of the Special Master without change. The defendants appealed, and asked this Court to stay the District Judge's order pending appeal. We granted a partial stay of the order concerning items pertaining to hiring of additional corrections

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[1] Named also in the complaint were the Director of the Louisiana Department of Corrections, the Assistant Warden, Deputy Warden, Chief Security Officer, and other security officers.

officers and installation of temporary housing, walls, and/or fencing upon condition that

> the appellants make a proper showing to the District Court that they have made reasonable and diligent efforts to comply with the terms of the judgment and order but are unable to do so because necessary funds have not been made available by the State and are not available from any other source, or that it is practically and physically impossible to achieve full compliance for valid and sufficient reasons.

Our order also provided that

> pending this appeal the district Court may exercise supervisory jurisdiction as to its judgment and order and in its discretion may grant or deny motions for stay relating to strict compliance with the terms thereof.

The record does not indicate that appellants ever offered to show the District Court the impossibility of compliance, so as to make the partial stay effective.

During the pendency of this appeal the United States moved for emergency relief regarding overcrowding at Angola. On September 5, 1975, the District Judge enjoined the appellants from accepting any new prisoners other than escapees and parole revokees until the Angola inmate population "is no greater than the designed capacity of that facility." The appellants have appealed from that order which has been consolidated with their appeal from the June 19 judgment and order. The consolidated appeal is now before us.

The District Judge found that conditions at Angola "shock the conscience of any right thinking person" and "flagrantly violate basic constitutional requirements as well as applicable State laws," and that "the State authorities, who have the power to do so, are either failing or refusing to take the necessary steps to correct these conditions." He adopted the Special Master's conclusions of law that inmate conditions as a whole at Angola violated the cruel and unusual punishment prohibition of the eighth amendment, and that the system of medical care at Angola violated the eighth amendment as well as the due process clause of the fourteenth amendment. As conditions to the continued operation of Angola the District Judge developed a 15-page list of requirements concerning inmate protection, medical care, maintenance, repair, construction and safety, food and sanitation, racial discrimination and segregation, religious freedom, censorship of mail, conditions of punitive or administrative confinement and procedural due process. As long-range relief he required that the appellants develop and submit within 180 days a plan, including specific timetables and funding plans, for the future constitutional operation of Angola.

Appellants do not challenge the entirety of the District Court's order. Many of the provisions have already been complied with. They do object to portions of the order which they assert are beyond the authority of the District Judge. In particular, they dispute the authority of the District Judge under the eleventh amendment to make an order which they contend requires named officials "to divert funds otherwise appropriated by the Leg-

islature" and requiring, in effect, "compliance by the sovereign state itself" because additional funds would have to be appropriated to comply with portions of the order. Appellants question whether the District Judge's finding of inadequate inmate security rises to constitutional proportions so as to support his requirement that 950 correctional officers be employed at Angola within six months of the order, and that two officers be present inside each inmate dormitory at all times. They also question the District Judge's enforcement of the Louisiana fire and sanitation codes at Angola. They question whether the record supports the District Judge's finding of such severe overcrowding as to require enjoining further acceptance of new inmates, and to require construction of temporary housing, walls and fencing. They contend that the Angola medical care system is not so deficient as to amount to a constitutional violation. They argue that to require submission of a long-range plan within 180 days is unreasonable. Finally, appellants call for the convening of a three-judge district court to decide the issues in this case.

[1] *Three-judge court.* We find that a three-judge court is not required in this case. Appellants contend that the relief ordered by the District Judge will directly require the expenditure of state funds, and therefore is a "federal decree that . . . legislative appropriations be reallocated or enjoined" requiring a three-judge district court, *Wyatt v. Aderholt*, 5 Cir., 1974, 503 F.2d 1305, 1318. Appellants' reliance on *Aderholt* is misplaced. The quoted dictum refers to a hypothetical, direct order of a federal judge that the state budget be revised. The order

in the present case is different. It directs only that Angola not be operated at all if it is to be operated in a manner violating constitutional rights. *Aderholt* does not require a three-judge court under such an order; nor does *Sands v. Wainwright*, 5 Cir., 1973, 491 F.2d 417 (*en banc*), *cert. denied*, 416 U.S. 992, 94 S.Ct. 2403, 40 L.Ed.2d 771 (1974). See, e. g., *Leonard v. Mississippi State Probation & Parole Bd.*, 5 Cir., 1975, 509 F.2d 820, 822-23; *Newman v. Alabama*, 5 Cir., 1974, 503 F.2d 1320, 1327.

The gravamen of the defendants' contention that a three-judge court is required in the present case is their assertion that the District Court's order operates to enjoin a Louisiana appropriations statute and the Louisiana prisoner commitment statute.[2] However, the District Judge was careful not to enjoin operation of these statutes. In his Judgment and Order he explicitly addressed only "conditions and practices" in the operation of the prison at Angola. In substance what the District

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[2] The full text of LSA R.S. 15:824 follows:

Notwithstanding any provision of law to the contrary, any individual subject to confinement in a state adult penal or correctional institution shall be committed to the Louisiana Department of Corrections; and not to any particular institution within the jurisdiction of the department. The director of corrections shall assign each newly committed inmate to an appropriate penal or correctional facility. The director may transfer an inmate from one such facility to another, insofar as the transfer is consistent with the commitment and in accordance with treatment, training and security needs established by the department; provided, however, that no juvenile may be transferred to a penal or correctional facility for persons committed by a court having criminal jurisdiction except in accordance with the provisions of R.S. 15:1062.

Judge held was that the terrible conditions at Angola, which are not disputed,[3] amount to a constitutional deprivation to its inmates, and that the defendants must comply with proper constitutional standards, which he specified, if the prison is to continue in operation.

To find that no statute or regulation is explicitly challenged does not end this inquiry, however. The "failure to challenge the constitutionality of a specific regulation will not vitiate the need to convene a three judge court, where the relief sought, if granted, would inexorably condemn those promulgated rules and regulations not specifically challenged." *Newman v. Alabama*, *supra*, 503 F.2d at 1326-27. In this regard the Supreme Court has said:

> It is necessary to distinguish between a petition for injunction on the ground of the unconstitutionality of a statute as applied, which requires a three-judge court, and a petition which seeks an injunction on the ground of the unconstitutionality of the result obtained by the use of a statute which is not attacked as unconstitutional. The latter petition does not require a three-judge court.

Ex parte Bransford, 310 U.S. 354, 361, 60 S.Ct. 947, 951, 84 L.Ed. 1249 (1940). Taking *Bransford* as our guide, we find that the practices sought to be enjoined were not "in effect, the application of administrative rules or regulations" which the defendants now seek to protect, *Leonard v. Mississippi State Probation & Parole Bd.*, 5 Cir., 1975, 509 F.2d 820, 823.

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[3] The facts are largely stipulated in this case. Twenty pages of factual stipulations are appended to the Special Master's report.

The appropriations statute is not "inexorably condemned" because the Legislature could choose to close the unconstitutional facilities rather than appropriate funds needed to bring them to habitable standards. Nothing in the order requires the Legislature to apply its funds other than as it wishes. That it has shown the wisdom to choose rehabilitation and expansion of facilities for Angola prison, as well as other Louisiana prison facilities, attests to its good judgment.

In a supplemental brief appellants contend that the three-judge court issue is foreclosed by our decision *en banc* in *Costello v. Wainwright*, 5 Cir., 1976, 539 F.2d 547. However, *Costello* does not control this case. The circumstances in *Costello* were unique. There a District Court order required that the overall prisoner population of the Florida Division of Corrections be reduced in certain specified stages for the reason that the facilities were unconstitutionally overcrowded. The only named defendant with authority to control prisoner population in Florida was Louie L. Wainwright, Director of the Division of Corrections. The en banc court held that the District Judge's order required Wainwright to refuse to accept prisoners. State law, however, commanded Wainwright as Director "with the compelling force of criminal sanction, to accept all prisoners lawfully committed to his care."[4] *Costello v. Wainwright, supra*, 539

[4] Fla.Stat. § 839.21 provides:

Any jailer or other officer, who willfully refuses to receive into the jail or into his custody a prisoner lawfully directed to be committed thereto on a criminal charge or conviction, or any lawful process whatever, shall be guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

F.2d at 550. Thus a constitutionally grounded coercive order directed toward a state official was brought into direct, irreconcilable conflict with a coercive state statute directed toward the same official. This constitutes "interdiction of the operation at large of [a] statute" as contemplated by the three-judge court statute, 28 U.S.C. § 2281.[5] *Morales v. Turman*, 5 Cir., 1976, 535 F.2d 864, 871; see *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 154-55, 83 S.Ct. 554, 560, 9 L.Ed.2d 644 (1963).

The instant case presents no such irreconcilable conflict. The Louisiana statute provides that prisoners "shall be committed to the Louisiana Department of Corrections and not to any particular institution within the jurisdiction of the department," and that the director "may transfer an inmate from one such facility to another, insofar as the transfer is consistent with the commitment and in accordance with treatment, training and security needs established by the department; . . ." LSA R.S. 15:824. The only such facility affected by the order in this case is Angola. There is no irreconcilable conflict interdicting the operation of a statute as there was in *Costello*. This distinction as well as our past holdings, see, e. g., *Gates v. Collier*, 5 Cir., 1974, 501 F.2d 1291, and *Newman v. Alabama*, *supra*, direct us to the

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[5] It appears that Wainwright did in fact refuse to accept prisoners in apparent contravention of the statute on two occasions. On a third occasion similar action "was rescinded upon strict orders issued Wainwright from the Governor of the State of Florida" and caused a mandamus action to be filed against Wainwright in state court by state law enforcement officials. *Costello v. Wainwright*, *supra*, 539 F.2d at 151 n. 16.

conclusion that no three-judge court is needed in this case.[6]

[2] *Totality of conditions violate eighth amendment.* After extensive hearings the Special Master made findings of fact which were adopted by the District Judge. They are not disputed by defendants. Among the facts found were these: During the three years preceding the Special Master's hearings more than 270 stabbings of inmates by other inmates were reported; 20 deaths resulted. This deplorable condition is due to overcrowding and to lack of security. Numerous "forcible rapes" were committed on inmates by other inmates, the total number being unknown. Inmate dormitories were "terribly overcrowded" and insufficient cell space existed to segregate dangerous prisoners from the rest of the inmate population. The prison staff included too few guards to protect the inmates from one another through either supervision or through confiscation of weapons. Easy inmate access to unsupervised machinery and other resources resulted in widespread possession of weapons. Fire and safety hazards constituted an "immediate threat to the life and safety" of both inmates and staff. Multiple health and sanitation violations were in evi-

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[6] This case much more closely resembles *Gates* than *Costello* in such respects as the number and powers of named defendants, see *Costello v. Wainwright*, *supra*, 539 F.2d at 552 n. 15, and in that it affected only one facility. In *Gates*, of course, we held that a three-judge court was not needed to promulgate an order similar to the one in this case, *Gates v. Collier*, *supra*, 501 F.2d at 1298-99; see also *Newman v. Alabama*, 5 Cir., 1974, 503 F.2d 1320, *cert. denied*, 421 U.S. 948, 95 S.Ct. 1680, 44 L.Ed.2d 102 (1975); *Leonard v. Mississippi State Probation & Parole Board*, 5 Cir., 1975, 509 F.2d 820, *cert. denied*, 423 U.S. 998, 96 S.Ct. 428, 46 L.Ed.2d 373.

dence, including accumulation of sewage under the main kitchen (since cleaned out) and including a "serious rodent problem." We have carefully reviewed the record in this case and find that it contains ample support for each of these findings.

In *Gates v. Collier*, 5 Cir., 1974, 501 F.2d 1291, we said:

> Each factor separately, i. e., overcrowding dormitory barracks, lack of classification according to severity of offense, untrained inmates with weapons, lack of supervision by civilian guards, absence of a procedure for confiscation of weapons, may not rise to constitutional dimensions; however, the effect of the totality of these circumstances is the infliction of punishment on inmates violative of the Eighth Amendment, as determined by the trial court. [501 F.2d at 1309.]

With the exception of the use of inmate guards—recently terminated at Angola—the *Gates* excerpt could have been written with reference to the Special Master's report in the present case. Thus the District Judge was fully justified in finding that the totality of circumstances as to conditions of confinement at Angola amounted to a violation of the eighth amendment.

[3-5] *The policy of federal courts in prison matters.* The Supreme Court has articulated for the federal courts a policy of minimum intrusion into the affairs of state prison administration; state prison officials enjoy wide discretion in the operation of state penal institutions. *Procunier v. Martinez*, 416 U.S. 396, 404-05, 94 S.Ct. 1800, 1807, 40 L.Ed.2d 224 (1974). This Court has been

mindful of the policy; *Newman v. Alabama, supra*, 503 F.2d at 1328; *Campbell v. Beto*, 5 Cir., 1972, 460 F.2d 765, 767. We recognize, however, "that deference should be tendered only as to these necessary or essential concomitants of incarceration," *Newman v. Alabama, supra*, 503 F.2d at 1329. "But a policy of judicial restraint cannot encompass any failure to take cognizance of valid constitutional claims whether arising in a federal or state institution." *Procunier v. Martinez, supra*, 416 U.S. at 405, 94 S.Ct. at 1807; *see Campbell v. Beto, supra*, 460 F.2d at 767-68. Constitutional limitations on state prison operation include the cruel and unusual punishment prohibition of the eighth amendment, see *Robinson v. California*, 370 U.S. 660, 82 S.Ct. 1417, 8 L.Ed.2d 758 (1962). The prohibition against cruel and unusual punishment "is not limited to specific acts directed at selected individuals, but is equally pertinent to general conditions of confinement that may prevail at a prison." *Gates v. Collier*, 501 F.2d at 1301. The equitable discretion of the District Judge is sufficiently broad to provide relief for all that is shown by the proof. *Newman v. Alabama, supra*, 503 F.2d at 1332-33, Fed. R.Civ.P. 8(f), 15(b). The District Court's order of extensive relief pertaining to constitutional infirmities in the prison as abundantly revealed by the proof was not an abuse of discretion but a reasonable exercise of judicial authority. *Cf. Newman v. Alabama, supra*, 503 F.2d at 1322; *Wyatt v. Aderholt, supra*, 503 F.2d at 1308.

The eleventh amendment and the disbursement of funds. The appellants challenge the authority of the District Judge to enter portions of his order requiring in-

creased inmate safety measures and enhanced medical facilities. The appellants urge that "it is an illegal order for the federal court to *directly* order the state through its officials to use the funds. Defendants suggest that in view of the decision in *Edelman v. Jordan*, 415 U.S. 651, 94 S.Ct. 1347, 39 L.Ed.2d 662, such expenditures can only be the *indirect* effect of the judgment of the federal court." [Emphasis in the original.]

[6] This argument misconstrues the nature of the District Judge's order. As already observed, the order does not require the spending of funds. It requires only that if the State of Louisiana continues to operate the Angola prison it must do so in accordance with the Constitution and laws of the United States and the State of Louisiana.

[7] Further, appellants' argument regarding the authority of the District Judge overlooks prior definitive holdings of this Court on the subject of prison reform. It is within the authority of the District Judge to order that constitutional violations be rectified if the prison is to remain open. That the eleventh amendment is no bar to such relief is shown by our affirmance of the orders in, e. g., *Wyatt v. Aderholt, supra; Newman v. Alabama, supra;* and *Gates v. Collier, supra.*

The eleventh amendment and the named defendants' authority. The appellants contend that the District Judge lacked authority to order the appellants to perform actions, particularly to expend funds, beyond their statutory authority. Specifically they complain that the appellants are "unable personally" to comply with

portions of the order potentially requiring expenditure of "large amounts of funds."

[8] Having affirmed the District Judge's finding of unconstitutionality of the conditions at Angola we recognize his authority to order relief "coterminous with the scope of the constitutional violation found to exist," *Newman v. Alabama, supra*, 503 F.2d at 1332-33. Insofar as the appellants argue that they are prevented from complying with the order because of lack of funds or lack of authority to obtain or expend funds, we have said that

> the obligation of the Respondents to eliminate existing unconstitutionalities does not depend upon what the Legislature may do, or upon what the Governor may do, or, indeed, upon what Respondents may actually be able to accomplish. If [the State] is going to operate a Penitentiary System, it is going to have to be a system that is countenanced by the Constitution of the United States.

Wyatt v. Aderholt, supra, 503 F.2d at 1315, quoting *Holt v. Sarver*, E. D. Ark., 1970, 309 F.Supp. 362, 385. Thus lack of funds or authority over funds does not justify operating a prison in an unconstitutional manner.

[9] The District Judge did not order the expenditure of funds by appellants. He only set the conditions under which the Angola prison could continue in operation constitutionally in the "immediate" and "intermediate" future. For the long-term future, his order contemplates appellants' formulation of their own plan for constitutional operation of Angola. In the immediate and intermediate future the order requires only that Angola

not be operated in an unconstitutional manner. Compliance with the order may require as incidental and ancillary consequence the expenditure of state funds but that is not forbidden under *Edelman v. Jordan*. (See 415 U.S. at 667-68, 94 S.Ct. at 1357-58.) The District Judge's order was therefore fully in compliance with recent precedents of this Court on the same subject matter.

[10] *Prisoner safety*. We have affirmed the District Judge's finding that the totality of conditions at Angola violated the eighth amendment rights of the inmates. The number of prison guards necessary to assure a constitutional level of inmate safety must bear some reasonable relationship to the total number of inmates. A proper ratio should be established by reference to the various kinds of facilities at the prison, taking into account the capacity and purpose of each, thereby determining the number of guards required to provide security in each; or by proof showing usual adequate ratios established at other institutions where the level of prison violence is acceptable; by proof of learned studies, or by other proof acceptable to the District Judge.

We note from the appellants' supplemental brief that at the time the District Judge set 950 as the required number of guards at Angola, the inmate population was about 3,900. At the time the supplemental brief was written the number of guards had increased to about 800 and the number of inmates had declined to about 2,640. Obviously some adjustment in the number of guards is necessary in view of changed and changing conditions at the prison. As the Government indicated in its brief (p. 62), "we believe that it may be appropriate

for the district court to give defendants an opportunity to prove that a lesser number of officers are needed to provide adequate safety for those confined at Angola." We agree. On remand the District Court should reopen the proceedings for presentation of such relevant evidence as may be required by the parties to update the record and obtain a new ruling.

[11] We also approve that part of the District Judge's order requiring the presence of two guards in open dormitories at all times.[7] We have approved this kind of relief in the past; in *Gates v. Collier, supra,* we approved an order which required the posting of three guards in each barracks during nighttime hours. 501 F.2d at 1309. In the present case, Chief of Security Bryan, a defendant, testified as follows:

Q: Col. Bryan, is homosexuality a problem inside the penitentiary?

A: It is, in every penitentiary.

Q: Isn't it in your particular penitentiary?

A: It is.

Q: How severe is this problem inside Angola?

A: No worse than any other prison, I would think.

Q: Would you classify it as one of the more serious problems you have?

A: It is.

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[7] Appellants "object strenuously to the order of the court to house two officers in each dormitory twenty-four hours a day" despite having stipulated with the Special Master that "[a] correctional officer should be stationed in each dormitory 24 hours a day, 7 days a week, with supervisory correctional officers nearby." Appendix to the Report of the Special Master, para. 45.

Q: Are any of the stabbings related to homosexuality?

A: Yes, sir.

Q: What percentage?

A: About fifty percent.

Q: How is it possible for those homosexual acts to occur inside the penitentiary?

A: We have open type dormitories. We do not have officers inside the dormitories at all times.

Another defendant, Deputy Warden Dees, testified:

Q: All right, how many ways do you have in order to prevent them from being in possession of weapons?

A: Very few. The only thing we can do is shake them down, search them periodically.

Q: What would you need at your disposal in order to make the situation better than what it is or what it has been?

A: Well, we can make it better, I guess, but we need more security personnel where you could be constantly searching people, have someone constantly on the scene within the dormitories. That is the only way I know.

This evidence speaks for itself. Appellants have offered no alternative means of improving inmate safety within the dormitories to acceptable levels. "It is the obligation of penitentiary officials to insure that inmates are not subjected to any punishment beyond that which is necessary for the orderly administration of [the prison]." *Gates v. Collier, supra,* 501 F.2d at 1309. Accordingly,

the District Judge's order which is based upon the opinion of prison officials and is similar to previous orders which we have affirmed was well within the authority of the District Judge in this case.

[12] *Use of state fire and sanitation codes.* Appellants complain of the District Judge's "enforcement" of the state fire and health codes by his order. It is true that "constitutional questions do not arise merely because a state prisoner has been treated at variance with state law," *Gates v. Collier, supra,* 501 F.2d at 1302. Such failure to comply with state norms can be "significant," however, in making a finding regarding constitutionality, *id.*

In the past we have affirmed findings of constitutional violations based in part on state code violations; see *Gates v. Collier, supra; Newman v. Alabama, supra.* It is "significant that the current conditions at [the prison] even fail to comply with the state standards, much less constitutional norms." *Gates v. Collier, supra,* 501 F.2d at 1302. State codes reveal to the District Judge the minimum standards by which the state itself proposes to govern itself concerning habitability. Such a standard is a valuable reference for what is minimal for human habitation in the public view, thus serving as an indicator of "evolving notions of decency," *Newman v. Alabama, supra,* 503 F.2d at 1330 n.14; see *Trop v. Dulles,* 356 U.S. 86, 101, 78 S.Ct. 590, 598, 2 L.Ed.2d 596 (1958). State codes also are a valuable index into what levels of decency the public, expressing itself through the Legislature, is prepared to pay for. Therefore, we approve the use of state sanitation and fire codes be-

cause in this manner the federal district judge can minimize his intrusion into the details of prison administration, allowing the state's own published standards to govern. The District Judge did not err in making use of the state fire and sanitation codes.

[13] *Overcrowding.* The appellants complain that the computation by which the District Judge concluded that Angola was overcrowded was based on an unrealistic figure of 80 square feet per inmate. They point out that the Fire Marshal's report, which is in the record, used a figure of 50 square feet per inmate. The record also shows that the prison contains many different kinds of living areas for inmates, designed for widely differing purposes. In its brief (p. 55) the Government states, "We do not argue that 80 square feet per inmate is a constitutionally compelled standard." It is apparent that the District Judge relied on the testimony of Angola Warden Henderson (who no longer holds this position) who said that he recommended a standard of 80 square feet per inmate and said that on that basis Angola could house 2,641 prisoners. The Warden did not otherwise specify how this total figure was arrived at. The District Court then held that the designed capacity at Angola is 2,641 inmates, in keeping with the Warden's testimony. Because it was necessary as the basis for a temporary, emergency order we affirm the District Judge's order forbidding new additions to the inmate population. We do, however, remand this issue for a more complete record and for a recomputation of the proper inmate population at Angola. The functions and characteristics of each building should be taken into account in arriving at the

capacity of each. A simple mathematical calculation of total square feet of space divided by a standard of square feet of space per man may not necessarily be appropriate or practicable. We observe that Warden Henderson also said that the normal size of a cell at the penitentiary was 6×8. That is of course a total of 48 square feet.[8] In updating the record defendants should also submit full information as to the additional inmate facilities now under construction or completed at Angola as a result of the state's building program there. When the acceptable inmate population figure is thus arrived at the District Judge should reconsider his emergency order forbidding additions to the inmate population. This should be done as soon as possible in order to alleviate the backup of prisoners in parish jails and other forwarding institutions. The parties should be allowed full opportunity to submit all necessary and relevant proof on this issue after which a new ruling by the District Court will be proper.

[14] *The unconstitutional level of medical care.* Appellants contend that the "medical care delivery system," while admittedly deficient, is not so deficient as to amount to cruel and unusual punishment. The District Judge adopted the Special Master's determination that deficiencies in medical facilities and treatment at Angola violated both the eighth amendment and the due process clause of the fourteenth amendment.

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[8] In *Gates v. Collier*, N.D.Miss., 1975, 390 F.Supp. 482, 486, District Judge Keady held, "We know from the undisputed evidence that generally accepted correctional standards require a minimum of 50 square feet of living area for every prison inmate."

Just where a deficiency reaches eighth amendment dimensions is difficult to determine, particularly in light of the policy of federal courts in dealing with prison administration. We have said, however, that prison authorities "abuse their discretion" in the treatment of inmates when the prison reflects

> conditions that threaten their physical health and safety and deprive them of basic hygiene and medical treatment by reason of gross deficiencies in plant, equipment and medical staff. . . .

Gates v. Collier, supra, 501 F.2d at 1303. In another case we said:

> Under the cruel and unusual punishment clause of the eighth amendment, courts confine their inquiry *inter alia* to whether conditions of confinement "shock the conscience," are greatly disproportionate to the offense, or offend evolving notions of decency.

Newman v. Alabama, supra, 503 F.2d at 1330 n.14. Regarding the due process clause of the fourteenth amendment we have said that courts

> are tolerant of some mishaps and require only that "under the totality of the circumstances, adequate medical treatment be administered when and where there is reason to believe it is needed."

Id. In *Newman* this Court found that the totality of circumstances concerning medical care deprived prisoners of their rights under the eighth and fourteenth amendments, on a showing of evidence of rampant and not isolated deficiencies which due to callous indifference

subject inmates to the severe deprivations chronicled in the record below.

The "deprivations" shown by the record in *Newman* included "insufficient staffing" resulting in, for example, inmate assistants administering treatment and medication, taking x-rays, giving injections and performing suturing and minor surgery; unsanitary conditions, shortages of medical supplies; ill-serviced and substandard equipment; the absence of ambulances; delays in effecting medical referrals to facilities equipped to deal with them; delays in filling requests for eyeglasses and prosthetic devices; and lack of adequate facilities for geriatrics and for the mentally disturbed. *Newman v. Alabama, supra*, 503 F.2d at 1323-24.

Concerning the medical care delivery system at Angola, the Special Master concluded that "[t]he defendants have failed to provide the inmates with proper medical care and treatment by professionally qualified and trained medical personnel using adequate medical facilities, equipment and supplies." The parties stipulated that the Angola General Hospital, the major medical unit serving the prison,

> is not accredited by the Joint Commission on Hospital Accreditation and does not meet the Conditions for Participation of Hospitals of the United States Department of Health, Education and Welfare. The hospital is understaffed and has often been operated for extended periods without the services of a resident physician.
>
> * * * * *
>
> Of those persons who were employed at the hospital

> and on its medical staff only two were licensed to practice in the State of Louisiana and no person on the medical staff was licensed to practice in another state.

Inmates filled the following positions at the hospital: emergency room attendant; x-ray attendant; physician's assistant; laboratory assistant; leutics and physical therapy assistant; eye, ear, nose and throat clinic assistant; ambulance driver; sick-call assistant; nurse; dental assistant; dental lab assistant; consulting clinic assistant; operating room technician; prescription clerk; medical records clerk; hospital diet cook; security clerk. The parties further stipulated that

> approximately two-thirds of these inmates have attained an educational level no higher than the eighth grade. None of the inmates assigned duties which involve the delivery of medical care have had any formal medical training or any significant medically related employment experience. Of those inmates who are assigned nursing duties almost half of them have a fifth grade education or lower. Only one inmate assigned as a nurse has had more than nine years of formal education and this inmate is not a high school graduate. One inmate who works as a nurse can barely read or write. The hospital administrator, therefore, has assigned him an assistant.

The record also reflects that at the time of trial there were no registered nurses at the hospital.

The parties stipulated that the clinical laboratory enjoys the services of neither a consulting pathologist nor of a quality control service. Test records are neither maintained at the lab nor recorded in patients' medical

records. No written organizational plan or policies or procedures concerning test procedures, safety procedures or equipment quality control exist. No records, reports or statistical information are maintained. The equipment is not adequately calibrated.

The parties stipulated that the x-ray is operated by "a self-trained inmate hospital worker who has an inmate assistant." There is no adequate supervision of the department.

The parties stipulated that the pharmacist is neither licensed nor academically trained as a pharmacist. The pharmacy has no written organizational plan or procedures. Control of needles and syringes is inadequate in the pharmacy and hospital. The pharmacy contains outdated drugs and has no system of keeping supplies up to date. During the 16 hours daily when the pharmacist is off duty inmate assistants have unsupervised access to the pharmacy and dispense medications. Controlled medications, including narcotics, prescribed for outpatient inmates at remote areas of the penitentiary are administered by security officers who have refused to sign receipts for the drugs. No records of this dispensing are kept. There is no record or notification to the medical staff of adverse drug reactions. "Some inmates, in fact, do not receive the medication which has been prescribed and ordered for them." The record reflects that inmates have been known to sell their prescribed drugs to other inmates.

The parties stipulated that the dental clinic has not been inspected or accredited by the American Dental Association. It lacks a written organizational plan or

statement of policies. "Only those inmates who raise dental complaints are examined. There is no regular or periodic dental exam. The dental department does not maintain records of those inmates it does examine."

The parties stipulated that the surgical suite is "rapidly deteriorating and its equipment has become obsolate and/or inoperative." Most surgery is performed by agreement at Charity Hospital in New Orleans and Earl K. Long Hospital in Baton Rouge. Because of the limited space available to prisoners at these hospitals "inmates in need of surgery must wait five to six months. In some instances, Charity Hospital has refused to receive and admit inmates." The stipulation continues,

> In the past a surgeon visited the hospital on a regular schedule and performed surgery. However, due to the lack of equipment and the lack of a qualified medical staff to assist and to provide post-operative care, he declined to perform further surgery at the hospital.

When examined by a medical survey team the emergency department equipment was described as "filthy." The record reflects unsupervised inmate staff applying casts to broken bones, suturing wounds and performing other technical tasks for which the parties stipulated that they were unqualified.

The parties stipulated that at the time of the testimony of the hospital administrator at trial "sick call had not been conducted at [certain remote] locations for three weeks."

The stipulation continues,

> The hospital's diet kitchen is not properly equipped. The inmate cooks lack the expertise and do not have the guidance to enable them to prepare a diet which conforms to a patient's medical and nutritional needs. When inspected by the medical survey team, the sanitation of the kitchen was deplorable.

A member of the medical survey team discovered that one of the two pieces of equipment in the physical therapy department, a whirlpool bath, was inhabited by fish being kept fresh prior to being eaten. The inmate in charge of this department prescribes, administers and makes records of treatment without supervision despite lacking any training for his duties or any education beyond tenth grade. Testimony in the record reflects that this inmate performs blood tests for syphilis and administers "penicillin type products personally," and that these are normally the functions of a physician.

The parties stipulated that

> The accuracy and confidentiality of the doctor-patient relationship and of the medical records is violated. Portions of the medical records have been purchased and stolen. Not only do inmates have access to the medical records, but those persons working in the medical records department do not have the authority to prevent security personnel from examining an inmate's medical record.

The parties stipulated that there is no psychiatric unit, although "Approximately 40% of the inmate population, or 1,360 inmates, would benefit from psychiatric treatment." An area of the cell block is used to house those for whom in-patient psychiatric care would be ap-

propriate. Those confined to the cell block are under supervision of correctional officers who have no medical training. "No notes, medical records or observations of the inmates confined to the psychiatric unit are recorded." The parties conclude this stipulation saying "The psychiatric unit is totally inappropriate for the confinement of a psychiatric patient."

Testimony in the record indicates that some inmate patients are kept in locked rooms not equipped with nurse call and to which hospital aides have no keys.

The District Judge did not err in determining that the medical care at Angola deprived the inmates of constitutional rights.

The long-range plan. Appellants argue that it is burdensome to comply with the District Judge's order to submit a detailed long-range plan for constitutional operation of the prison, within 180 days. The purpose of the plan is to allow the appellants and the state the kind of self-determination for which they repeatedly argue in their briefs. We affirmed such an order in *Gates v. Collier, supra.*

Pursuant to our request appellants have supplied the court with the detail of funds appropriated by the Louisiana Legislature for prison reform in the state. A total of $106,605,000 for capital outlay funds was appropriated by Act 10 of the 2d Extraordinary Session of 1976 of the Louisiana Legislature. Provisions were made for construction of numerous new facilities to house inmates, and the estimated completion dates are shown. For example, two dormitories are set for construction at

the Adult Correctional Facility at DeQuincy for first offenders providing 200 beds. A new facility to house 315 adult offenders for the Correctional Services Treatment Unit, the newly created center for psychiatric care and evaluation in New Orleans, is provided. At St. Gabriel construction of a new facility to house 1,000 adult offenders is provided for. At Angola a total of $30,000,000 has been authorized and will provide a Camp C 500 inmate capacity, at Camp D 500 inmate capacity, and at Camp J 200 inmate capacity. Camps C and D were scheduled for completion in February 1977 and Camp J for March 1977. Completion has been delayed, we have been informed, by bad weather but in a matter of months construction should be completed.

At Camp Beauregard a new facility for 250 work release and maintenance inmates has been authorized. At Claiborne Parish a new facility for 535 adult offenders is provided. At Dixon Correctional Institution in East Feliciana Parish, renovation will house 760 adult offenders. A complete statement of Supplemental Operating Funds of the State of Louisiana for the prisons referred to, including Angola, is shown on Exhibit A attached, which was supplied to the Court by the Attorney General of Louisiana in his supplemental brief filed January 17, 1977. It is clear that Louisiana is finally facing up to its responsibility for providing proper facilities for its criminal population. It is apparent that had it not been for the strong and determined efforts of District Judge Gordon West, the Louisiana federal trial judge in this case who ordered a cleanup of the deplorable conditions

at Angola, Louisiana officials might still be talking about prison reform instead of taking the remedial action which the large appropriation of funds now indicates.

Conclusion. Though we emphasize the policy of minimum intrusion into the details of state prison administration, when constitutional violations of rights of individuals, even prison inmates, are brought to our attention, we are bound to redress them. The scope of our authority to correct these conditions is as broad as the violations proven, striving where possible to permit self-determination to prison officials. That conditions of confinement for inmates at Angola have been terrible has been admitted by defendant Louisiana officials. Our interference in the affairs of Angola was inevitable; in fact, it was required by the Constitution. The requirements set for constitutional operation of Angola are as unobtrusive as possible under the circumstances; they do not exceed what we have affirmed previously in similar circumstances in other prison cases.

Thus the District Court did not exceed its authority herein, and the eleventh amendment does not bar the relief he granted. We therefore affirm the decision of District Judge West that the totality of conditions at Angola violated the eighth amendment, and specifically that the level of medical care at Angola violated the eighth and fourteenth amendments. We likewise affirm the relief ordered by the District Court. We remand for further determination as soon as possible, the proper figure for inmate population and for the number of prison guards necessary to insure safety at the Angola Peniten-

tiary.[9] We also affirm the remainder of the District Court's order.

AFFIRMED; REMANDED FOR FURTHER PROCEEDINGS.

EXHIBIT "A"

SUPPLEMENTAL OPERATING FUNDS: FCO 71-98 COMPLIANCE

FY 75-76

UNIT	AMOUNT	SOURCE	COMMENTS
(A) HDQ(10-01)	$ 1,373,113	Interim Emergence Board	Provided monetary support for compliance efforts at HDQ, LSP, DCI, & CSTU
(B) HDQ(10-01)	1,341,044	ACT 2-1976	Provided monetary support for compliance efforts at HDQ, LSP, DCI, & CSTU
(C) LSP(10-03)	1,736,467	ACT 2-1976	Provided monetary support for compliance efforts at LSP and Greenwell Springs Hospital.
TOTAL:	4,450,624	FY 75-76	

FY 76-77

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[9] We specifically direct the District Judge's attention to the overcrowded conditions at the Orleans Parish and Washington Parish prisons of which we take cognizance because there are pending before us appeals in the two matters involving these prisons, namely, *Howard v. Phelps*, No. 77-1227, and *Hamilton v. Gates*, No. 77-1228, in which this Court has been requested to stay orders of District Judge Mitchell in the *Hamilton* case and of District Judge Cassibry in the *Howard* case. These are pressing matters insofar as the court is concerned and the District Judge herein should attempt to alleviate these conditions at the earliest possible time.

(A) HDQ	4,951,951	ACT 17-1976	90% of increase in Hdq. budget from FY 75-76; (net of LSP, DCI, & CSTU), to FY 76-77
(B) LSP	3,546,550	ACT 17-1976	90% of increase in LSP Budget from FY 75-76 to FY 76-77, (net of CSTU)
(C) DCI	4,299,019	ACT 17-1976	FY 76-77 appropriation
(D) CSTU	475,000	ACT 17-1976	FY 76-77 appropriation (est. for Administration & Operation of the Psychiatric Program at CSTU.
(E) LCIS	760,824	ACT 17-1976	90% of increase in LCIS Budget from actual 75-76 to estimated 76-77, (contingent on completion of two new 100 man dorms).
(F) HDQ	215,821	Accelerated Spending	In accordance with Louisiana Department of Corrections expansion due to FCO 71-98 clarification.
(G) LSP	4,088,506	Accelerated Spending	
(H) DCI	93,951	Accelerated Spending	
TOTAL	$ 18,431,622	FY 76-77	

SUPPLEMENTAL CAPITAL OUTLAY FUNDS: FCO 71-98 COMPLIANCE

	FY 76-77 UNIT	AMOUNT	SOURCE	COMMENTS
(A)	LA Dept. of Highways	$ 19,840,000	ACT 10 - Second Extraordinary Session - 1976	Development of improved access to LSP in West Feliciana and Pointe Coupee Parishes. Estimated completion date: July 1981
(B)	LCIS	955,000	ACT 10	Construction of Two Dormitories to increase capacity of LCIS by 200 beds. Estimated completion date: October 1977

(C) CSTU	6,000,000	ACT 10	Construction of a new facility to house 315 Adult Offenders in the Work Release, Maintenance and Special Treatment Programs. Estimated completion date: February 1978
(D) ARDC St. Gabriel	23,990,000	ACT 10	Construction of a new facility to house 1000 adult offenders. Estimated completion date: February 1979
(E) LSP	30,755,000	ACT 10	Breakdown as follows: (1) $2,342,000 electrical distribution system (2) 3,269,187 Internal road sys. improvements (3) 6,830,000 Camp C—approx. capacity; 500—estimated completion date: 2/77 (4) 6,682,000 Camp D—approx. capacity; 500—estimated completion date: 2/77 (5) 6,585,742 Camp J approx. capacity; 200—estimated completion: 3/77 (6) 620,000 Camp F renovation (7) 1,500,000 New prison dining hall—construction (8) 2,926,071 Fees & contingency
(F) Camp Beauregard	2,435,000	ACT 10	Construction of a new facility to house approximately 250 Work-Release & Maintenance inmates. Estimated completion date: August 1978

(G) Claiborne Parish	15,000,000	ACT 10	Construction of a new facility to house approximately 535 adult offenders. Estimated completion date not scheduled.
(H) DCI	6,630,000	ACT 10	Renovation of colonies 6, 7, & 9 at Louisiana State Hospital to house 760 adult offenders. Colonies 6 & 7 completed & occupied.
TOTAL	$105,605,000		

Note by the Court:

According to the supplemental brief of the Attorney General of Louisiana (pp. 6-7) (filed January 17, 1977), "It is necessary to define some of the abreviations [sic] used to facilitate the Court's review of this schedule. FCO 71-98 stands for 'Federal Court Order Docket No. 71-98 in the Middle District of Louisiana'; HDQ stands for 'Headquarters'; LSP stands for 'Louisiana State Penitentiary'; DCI stands for 'Dixon Correctional Institute' (a facility recently established in East Feliciana Parish as a direct response to the September 5, 1975 order to reduce the population at Angola); CSTU stands for 'Correctional Services Treatment Unit' (the newly created center for psychiatric care and evaluation in New Orleans created especially in response to the Court order relating to medical treatment); LCIS refers to the Adult Correctional facility at DeQuincy, Louisiana for first offenders; the comments under the source column for items F, G, and H on page 1 of 'Accelerated Spending' refers [sic] to the fact that the monies indicated were already in the budget but have been spent faster than anticipated since the October clarification order of the lower Court. The categories from which these funds came will hopefully be replenished by the Legislature when it meets in April. Page 2 reflects the additional funds for capitol [sic] improvements associated with the compliance. The only new abreviation [sic] is item D of ARDC which stands for 'Adult Reception and Diagnostic Center'. With the exception of item A and C, all of the programs are under contract and in process."

APPENDIX D

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

HAYES WILLIAMS (66466), ET AL

VERSUS — CIVIL ACTION

JOHN J. MCKEITHEN, GOVERNOR OF THE STATE OF LOUISIANA, ET AL — No. 71-98-B

JUDGMENT

For the written reasons assigned,

IT IS ORDERED AND ADJUDGED that judgment be entered in favor of defendants and against plaintiffs dismissing plaintiffs suit for monetary damages.

Baton Rouge, Louisiana, September 10, 1980.

/s/ FRANK J. POLOZOLA
UNITED STATES DISTRICT JUDGE

APPENDIX E

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

HAYES WILLIAMS, ET AL

VERSUS — CIVIL ACTION

JOHN J. MCKEITHEN, ET AL — NUMBER 71-98-B

JUDGMENT

This cause having been duly heard and the Court considering the law and evidence and for written reasons assigned by United States District Judge Frank J. Polozola on August 4, 1980, as supplemented on August 5, 1980:

IT IS ORDERED, ADJUDGED AND DECREED that C. Paul Phelps, in his official capacity as Secretary of the Louisiana Department of Corrections, be and he is hereby ordered to pay out of the state funds of the Louisiana Department of Corrections the sum of $27,500.00 to David L. Morgan, Esq., attorney for plaintiffs, for attorney's fees incurred in this case.

Baton Rouge, Louisiana, August 5, 1980.

/s/ FRANK J. POLOZOLA
UNITED STATES DISTRICT JUDGE

APPENDIX F

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

HAYES WILLIAMS, ET AL

VERSUS — CIVIL ACTION

JOHN J. McKEITHEN, ET AL — NUMBER 71-98B

* * * * *

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* * * * *

FRANK J. POLOZOLA, District Judge:

This suit was filed by inmates of the Louisiana State Penitentiary seeking injunctive relief and monetary damages. The claim for injunctive relief was bifurcated from the plaintiffs' individual claims. On June 10, 1975, this Court issued its opinion granting to the plaintiffs certain injunctive relief. *Williams v. McKeithen*, C.A. 71-98 (M.D. La. 1975). The basic facts of this case have previously been set forth in this Court's opinion of June 10, 1975 and in the opinion of the Fifth Circuit Court of Appeals, *Williams v. Edwards*, 547 F.2d 1206 (5 Cir. 1977).

The sole issue now before the Court is whether or not the plaintiffs should be allowed to recover monetary damages for the claims each has asserted in the complaint.

The plaintiffs have filed this suit pursuant to 42 U.S.C. §1983. The individual plaintiffs who filed this suit were Lee Stevenson, Lazarus D. Joseph, Jr., Arthur Mitchell and Hayes Williams. After this case was tried, Stevenson died and his estate was substituted as a plaintiff. Each of the plaintiffs claim that their rights were violated because each was forced to be incarcerated in a racially segregated prison. Joseph also claims that he was deprived of religious material. Mitchell and Williams contend that they were denied a due process disciplinary hearing. Allegations of improper medical care and treatment have been asserted by the plaintiffs Mitchell and Stevenson. Stevenson also claims that the defendants failed to take appropriate action to protect him from injury from another inmate.

The acts complained of by these plaintiffs were allegedly committed in 1971 and prior thereto. At the time the acts complained of were allegedly committed, the United States Supreme Court and the Fifth Circuit Court of Appeals had not yet rendered any decisions which could have alerted the defendants that the acts the defendants are now charged with were unconstitutional. In 1971 and prior thereto, the federal courts were generally reluctant to interfere with prison administration. The so-called "hands off" doctrine usually resulted in the denial of relief under the Federal Civil Rights Act for practices such as punitive segregation, harsh confine-

ment conditions, and medical and religious claims. See, generally, 18 A.L.R. Fed. 7 (1974). After this suit was filed by plaintiffs, the courts began to set forth constitutional guidelines which prison officials were required to follow.

Thus, in 1974, the United States Supreme Court decided *Wolff v. McDonnell*, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974). However, the Supreme Court held that *Wolff's* new pronouncement should not be given retroactive effect. Following the *Wolff* case, other decisions were rendered by the federal courts setting forth additional standards for the courts and prison officials to follow in the daily operation and maintenance of prisons.

After carefully reviewing the law and the facts presented herein, the Court finds that plaintiffs' claims for damages under 42 U.S.C. §1983 must be denied in light of the Supreme Court's recent decision in *Procunier v. Navarette*, 434 U.S. 555, 98 S.Ct. 855, 55 L.Ed.2d 24 (1978). In *Procunier*, the Supreme Court held that a "qualified immunity" is available to prison officials unless: (1) "the constitutional right allegedly infringed by them was clearly established at the time of their challenged conduct, if they knew or should have known of that right and if they knew or should have known that their conduct violated the constitutional norm," *Procunier*, 434 U.S. at 562, 98 S.Ct. at 860, or (2) if they acted with malice. There were no "clearly established" rights such as those alleged in plaintiffs' complaint at the time these acts were allegedly committed in

1971 and prior thereto. The defendants were not required to predict what the future course of constitutional law would mandate. Because the defendants could not reasonably have been expected to be aware of constitutional rights that had not yet been declared, they did not act with such disregard for the established law that their conduct cannot reasonably be characterized as in good faith. *Procunier v. Navarette, supra; Wood v. Strickland*, 420 U.S. 308, 95 S.Ct. 992, 43 L.Ed.2d 214 (1975); *Baker v. McCollan*, ___ U.S. ___, 99 S.Ct. 2689 (1979). Furthermore, it is equally clear that the defendants' actions were not motivated by malice.

Section 1983 "imposes liability for violations of rights protected by the Constitution, not for violations of duties of care arising out of tort law. Remedy for the latter type of injury must be sought in state court under traditional tort law principles." *Baker v. McCollan, supra*, 99 S.Ct. at 2695.

The Court must also note that many of the defendants were not involved in the daily operation of the prison. Even the most liberal reading of the complaint filed herein and of the evidence presented at the trial fails to show any causal connection between the acts complained of and the individual defendants except for the warden, the Secretary of Corrections and some of the prison guards. However, as the Court has noted above, even those defendants who were involved in the daily operation of the prison are entitled to qualified immunity under the facts of this case.

Therefore, for the reasons set forth above, the

Court finds that the suit filed by the plaintiffs for monetary damages should be dismissed as to all of the defendants.

Judgement shall be entered accordingly.

Baton Rouge, Louisiana, August 6, 1980.

/s/ FRANK J. POLOZOLA
UNITED STATES DISTRICT JUDGE

APPENDIX G

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

HAYES WILLIAMS, ET AL

VERSUS — CIVIL ACTION

JOHN J. MCKEITHEN, ET AL — NUMBER 71-98-B

SUPPLEMENTAL REASONS FOR DECISION

* * * * *

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* * * * *

FRANK J. POLOZOLA, District Judge:

On August 4, 1980, the Court awarded the plaintiffs the sum of $27,500.00 for attorney's fees in accordance with 42 U.S.C. §1988. The Court failed to designate which of the defendants would be liable for these attorney's fees and in what capacity.

The Court now finds that the attorney's fees awarded herein shall be paid from funds of the Louisiana Department of Corrections. *Gary W. v. State of Louisi-*

ana, ____ F.2d ____ (5th Cir. July 31, 1980). Thus, the Court shall now issue an order directed to the Secretary for the Department of Corrections to pay the attorney's fees awarded herein from the state funds of the Louisiana Department of Corrections. Although the defendants have not yet objected to the payment of these fees out of state funds on the ground that the Louisiana Constitution prohibits the payment of judgments against the state except from funds appropriated for that purpose by the legislature, the Fifth Circuit Court of Appeals has recently ruled that such a defense is without merit. *Gary W. v. State of Louisiana, supra.* The Court, in the *Gary W.* case, concluded its opinion by stating that "an order directing the responsible state official to satisfy the judgment out of state funds is the only reasonable way to insure compliance with a valid federal judgment." *Gary W. v. State of Louisiana, supra* (Slip Opinion at p. 7875). See also, *Gates v. Collier*, 616 F.2d 1268 (5th Cir. 1980).

The individual defendants named in this suit shall not be personally liable for the attorney's fees awarded in this case.

Therefore, a judgment shall be entered directing C. Paul Phelps, in his official capacity as Secretary of the Louisiana Department of Corrections, to pay out of the state funds allocated to the Louisiana Department of Corrections the sum of $27,500.00 to David L. Morgan, Esq., attorney for plaintiffs for attorney's fees incurred in this case.

Judgement shall be entered accordingly.

Baton Rouge, Louisiana, August 5, 1980.

/s/ FRANK J. POLOZOLA
UNITED STATES DISTRICT JUDGE

APPENDIX H

HAYES WILLIAMS, ET AL

VERSUS — CIVIL ACTION

JOHN J. MCKEITHEN, GOVERNOR OF THE STATE OF LOUISIANA, ET AL — NUMBER 71-98

* * * * *

SUPPLEMENTAL ORDER

This matter came on for hearing this day, April 22, 1977, after remand from the Fifth Circuit Court of Appeals, with instructions to give further consideration to the question of how many correctional officers are needed to constitutionally operate Louisiana State Penitentiary at Angola, Louisiana, and to give further consideration to the question of how many inmates the Penitentiary at Angola, Louisiana is able to properly house under present, existing conditions. In addition to these two areas of inquiry, this Court, on its own motion, expanded the hearing to include testimony concerning the timetable for completion of new facilities presently under construction at the Penitentiary, and the expected timetable for the acceptance of additional inmates into that facility.

In this Court's original order pertaining to the operation of the Louisiana State Penitentiary, this Court, among other things, ordered the Department of Corrections to employ a total of 950 correctional officers. That figure was based primarily upon the testimony of C. Murray Henderson, who was at that time Warden of the Penitentiary. He stated that that was the minimum number of correctional officers that should be employed

at the Penitentiary at that time in order to properly protect the inmates, staff, and property at that facility. At that time the population of the Penitentiary was in the vicinity of 4,300 inmates. At the same time this Court ordered the State Department of Corrections to decrease the number of inmates incarcerated at the Penitentiary so that the number being held there would not exceed the design capacity of those facilities. The evidence at that time indicated that the design capacity of that facility was approximately 2,640 inmates, and as a result of this Court's order, the population of the Penitentiary was subsequently decreased to a total of 2,641 inmates. Thereafter this Court issued an order prohibiting the State Department of Corrections from accepting additional inmates into that facility in any numbers that would cause the total population to exceed that design capacity figure. That order is still in effect.

An appeal was taken from the overall order of this Court and when that appeal was heard by the Fifth Circuit Court of Appeals, it was apparently suggested by counsel for the Department of Corrections that they did not believe that 950 correctional officers were required at the facility since the number of inmates had been greatly reduced since the time the original order had been issued. Between the time of that appeal and the present time, however, there is no one connected with this suit who now disputes the need for at least 950 correctional officers. Indeed, all parties concerned with this suit, including the present Warden, Mr. Ross Maggio, now advise the Court that Angola at the present time has 1,079 correctional officers on board, and that the

total need at that facility is 1,350 correctional officers. This number, according to the testimony, is predicated upon the pending completion of the new facilities presently under construction at Angola. It is the testimony of the Warden that this number of correctional officers should be employed in the immediate future in order that they may be trained to take over their responsibilities as these new facilities become occupied commencing May 6, 1977.

Since the only question raised by the Fifth Circuit Court of Appeals in connection with the need for correctional officers was whether or not the figure of 950 correctional officers originally set by this Court was excessive, and since there is no evidence of any kind now to indicate that that number was excessive, and because of the fact that the testimony of all parties now indicates that a number in excess of 950 correctional officers is needed at the Penitentiary, this Court sees no reason to alter its prior order pertaining to correctional officers. If it were altered in any way, it would have to be altered in the direction of increasing the required number of correctional officers rather than decreasing that number. However, the Court believes that the minimum number previously ordered by this Court should remain as a part of the court order, and whatever increased number of correctional officers may be required at the institution should be left to the discretion of those operating that facility. Should it develop that whatever number of correctional officers is finally employed is not sufficient to properly protect the persons and property at the

Penitentiary, then this matter could, of course be reopened for further consideration by this Court.

In compliance with an order from this Court, Mr. C. Paul Phelps, the Director of the Department of Corrections, has undertaken to survey the space requirements at the Penitentiary in accordance with the views expressed by the Fifth Circuit Court of Appeals. According to his testimony, that analysis resulted in increasing the present capacity of the Penitentiary from 2,641 to 2,713 inmates. This is an increase of 72 inmates. Mr. Phelps testified that the inmate population at the Penitentiary has already been increased to that number. This figure of 2,713 inmates as the maximum design capacity of the Penitentiary at the present time is predicated on an allocation of approximately 50 square feet of housing area per inmate. There has been *no testimony* either at prior hearings or during the present hearing *which would* in any way *indicate that an allocation of less than 50 square feet per inmate could be considered adequate.* The Court is convinced, from this testimony, that the present maximum capacity of the Louisiana State Penitentiary at Angola, Louisiana, is 2,713 inmates, and that the institution is presently filled to that capacity.

The testimony given at the hearing this day indicates that present construction of additional facilities, undertaken in accordance with prior orders of this Court, had progressed and is progressing as speedily as possible. Some delay has been encountered because of weather conditions which hampered construction. However, Mr. Phelps testified that fourteen days from today,

that is, by May 6, 1977, the capacity at the Penitentiary will be increased by 390 inmates, or to a total capacity of 3,103 inmates. By May 6, 1977, when this capacity is reached, the Department proposed to take 120 new inmates per week into the Penitentiary for three weeks, and then to take 30 new inmates the last week, to bring the prison population up to 3,103 inmates.

By June 6, 1977, the capacity at the Penitentiary will be increased by another 97 inmates, or to a total of 3,200 inmates. These 97 new inmates will be taken into the Penitentiary at one time, immediately after June 6, 1977.

By July 6, 1977, when another section of the present construction is completed, there will be an increase in the capacity of the Penitentiary of 809 inmates, making the total capacity of that facility 4,009 inmates. It is proposed that the Department of Corrections will take into the Penitentiary, commencing on July 6, 1977, 120 inmates per week for four weeks. That will mean that by the middle of August, 1977, there should be 4,009 inmates housed at Louisiana State Penitentiary.

By February 6, 1978, another phase of construction will be completed, which will increase the capacity of the Penitentiary by an additional 130 inmates, making the total capacity at that time 4,139 inmates. It is proposed that the institution will take 65 new inmates per week beginning February 6, 1977 until the population reaches 4,139 inmates.

By September, 1978, the final stage of the present construction and renovation of existing facilities will be

complete, which will increase the capacity another 218 inmates, making a total capacity of 4,357. At that time 120 inmates will be received the first week, and 98 the second week, bringing the total prison population at that time up to 4,357 inmates.

In addition to this, by October of 1977, it is expected that construction and/or renovations at Louisiana Correctional and Industrial School at DeQuincy, Louisiana, a facility for first offenders, will increase the capacity of that facility by 200 inmates, and that that institution will take 50 inmates per week for four weeks during the month of October, 1977.

The figures, and these expected completion dates, appear to be reasonably reliable, and this Court expects, from the evidence produced today, that these deadlines can and will be met.

In addition to the above, other work and improvements at the Penitentiary are in the planning stage which, when completed in July of 1980, will increase the total capacity of the Penitentiary to 4,805 inmates. This additional construction and renovation is tentatively expected to be completed in segments commencing in July of 1979 through July of 1980. The work during this period is not, however, sufficiently programmed to enable deadlines to be set in connection therewith.

The testimony heard at this hearing indicates that there are a total of 1,867 inmates in parish prisons throughout the State that should be housed in state facilities rather than in parish prisons. Approximately 560 of these inmates are in the parish prison in New Orleans,

157 in the parish prison in Caddo Parish, 151 in the parish prison at Baton Rouge, and 115 in the mail in Jefferson Parish. The remainder are scattered throughout the State. It is obvious from the figures previously quoted that all of these prisoners cannot be absorbed into Louisiana State Penitentiary at Angola, Louisiana, by the time the facilities presently under construction are completed on July 6, 1977. As these facilities become available commencing May 6, 1977, it will be necessary for the Department of Corrections to receive prisoners on some pro-rata basis from the various parish prisons that are in need of relief. How this is done and on what basis it is done will be a matter to be decided by the Department of Corrections. But in no event shall the Department of Corrections receive at the Louisiana State Penitentiary at Angola, Louisiana, at any time, more inmates than that facility, at that time, is designed to hold. The Department must, however, receive prisoners within its design capacity just as rapidly as the design capacity increases.

In accordance with the testimony which has been outlined above, the Department of Corrections is hereby *ORDERED* to accept State prisoners at the Louisiana State Penitentiary at Angola, Louisiana, in accordance with the schedule herein set forth unless that schedule is changed or altered by order of this Court. In the event that construction or renovation of facilities is completed, in any instance, in advance of the dates hereinbefore set forth, the Department of Corrections is hereby *ORDERED* to accelerate the acceptance of inmates to the Louisiana State Penitentiary at Angola, Louisiana, as

much as possible, with due regard being had at all times to the design capacity of that institution.

Baton Rouge, Louisiana, April 22, 1977.

/s/ E. GORDON WEST
UNITED STATES DISTRICT JUDGE

APPENDIX I

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

HAYES WILLIAMS, LEE D. STEVENSON, ARTHUR MITCHELL, JR. AND LAZARUS D. JOSEPH, JR.

VERSUS

CIVIL ACTION NUMBER 71-98

JOHN J. MCKEITHEN, GOVERNOR OF THE STATE OF LOUISIANA; LOUIS M. SOWERS, DIRECTOR OF THE LOUISIANA DEPARTMENT OF INSTITUTIONS; C. MURRAY HENDERSON, WARDEN OF LOUISIANA STATE PENITENTIARY AT ANGOLA, ET AL.

AMENDED ORDER

Upon defendants' motion:

IT IS ORDERED that Section 2(a)(1) of the order issued herein by the Court on June 10, 1975, be, and it is hereby amended to read as follows:

(1) Immediately employ and continue to employ such additional medical personnel as is required to make the full time medical staff at the Penitentiary consist of *at least* four (4) physicians; one (1) psychiatrist; two (2) dentists; one (1) psychologist; eleven (11) trained physician assistants; one (1) dental assistant; three (3) nurses certified as RN; one (1) x-ray and physiotherapy technician; one (1) pharmacist; one (1) laboratory technician; and two (2) medical records technicians. Each professional medical employee shall meet the requirements for licensure in the State of Louisiana. Persons who fill the positions of physician assistants, which

are not subject to licensure in the State of Louisiana, shall be qualified by their education and training to perform the type of medical services which are assigned to physician assistants by the U. S. Bureau of Prisons, or to Hospital Corpsmen and Pharmacist Mates by the Armed Services of the United States, or shall meet the standards required of licensed practical nurses in the State of Louisiana. All medical treatment furnished to inmates shall be administered by licensed physicians or by the trained personnel here provided for, and no medical treatment shall be administered by untrained inmates. This does not prevent the supervised use of inmate personnel to supplement the civilian medical staff where such is necessary for adequate health care.

IT IS FURTHER ORDERED that except as otherwise amended, the order issued herein by the Court on June 10, 1975, shall remain in full force and effect.

Baton Rouge, Louisiana, this 11th day of March, 1977.

/s/ E. GORDON WEST
UNITED STATES DISTRICT JUDGE

APPENDIX J

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

HAYES WILLIAMS, ET AL

VERSUS — CIVIL ACTION

JOHN J. MCKEITHEN, ET AL — NUMBER 71-98

ORDER AND INJUNCTION

The plaintiffs in this case are prisoners incarcerated at the Louisiana State Penitentiary at Angola, Louisiana. They brought this suit on their own behalf and on behalf of all other prisoners similarly situated at Angola charging massive and aggravated violations of their rights under the Eighth Amendment to the United States Constitution. Much evidence was taken by this Court over an extended period of time, and after due consideration of the evidence, the Court concluded that the plaintiffs' Eighth Amendment rights have been and are being violated to the point that their continued incarceration at Angola under the conditions presently existing constitutes cruel and unusual punishment.

On June 10, 1975, this Court issued an order granting certain interim and long range relief, and since that time the defendants have been attempting, in the utmost good faith, to comply with those orders. Among the many illegal and unconstitutional conditions found to exist at Angola, serious overcrowding of facilities ranked as one of the worst. The serious overcrowding of Angola facilities has resulted and continues to result in the apparent inability of the Angola prison officials to control violence at the prison. Violence at the prison includes,

but is not limited to, stabbings, sexual assaults, physical assaults with fire, lighter fluid and other such things on a regular and continuing basis. Rehabilitation programs and security in general is greatly hampered by the overcrowded conditions. The United States as Intervenor and the plaintiffs seek further interim emergency relief. While the defendants have been trying, in good faith, to correct the overcrowded conditions at Angola, they have, for various reasons, met with very little success. According to the testimony in this case, Angola is designed to accommodate at most 2641 prisoners. On June 10, 1975, when the order granting relief was issued by this Court, there were 3953 prisoners at Angola or in transit. Thirteen weeks later, on September 3, 1975, there were 3932 prisoners there. The slight reduction was apparently caused by removal of a few prisoners to the Greenwell Springs Hospital. Thus, despite the efforts of the defendants, the prison population at Angola has not been substantially reduced in the thirteen weeks since the issuance of this Court's order of June 10, 1975.

At the hearing on this motion, Warden Henderson testified that the prison is receiving on the average 300 new prisoners per month while it is releasing, on the average, 136 prisoners per month. Thus there is currently an average monthly increase of 64 prisoners per month at Angola. The Warden also testified that because of these overcrowded conditions, it is necessary to place from two to eight prisoners in a cell designed for one. The United States as Intervenor, and the plaintiffs seek and are entitled to additional immediate interim relief. Failure to grant immediate emergency relief designed to

immediately commence a meaningful reduction in the prison population would be tantamount to approval of the continued operation of the prison in an unconstitutional manner. Therefore:

IT IS ORDERED that the defendants, Governor Edwin Edwards, Department of Corrections Director Elayn Hunt, and Warden C. Murray Henderson, their employees, agents and representatives, and all persons acting in concert with them, are hereby ENJOINED from accepting or permitting the acceptance of any new prisoners, except escapees who have been apprehended and parole violators who have had their parole revoked, into the Louisiana State Penitentiary at Angola, Louisiana, until the prisoner population at Angola is no greater than the designed capacity of that facility.

IT IS FURTHER ORDERED that this injunction shall become effective at midnight on Tuesday, September 9, 1975, and shall remain in effect according to the terms hereof.

IT IS FURTHER ORDERED that the issuance of this order shall in no way be construed to lessen in any way the duty and obligation of the defendants to comply fully with all of the provisions of this Court's order of June 10, 1975, and especially, but not by way of limitation, with that portion of the order requiring the defendants to take whatever affirmative steps they deem necessary and proper to reduce the prison population at Angola to acceptable levels at the earliest possible time.

IT IS FURTHER ORDERED that the defendants

be forthwith served with a copy of this order and injunction in accordance with law.

Baton Rouge, Louisiana, September 5, 1975.

/s/E. GORDON WEST
UNITED STATES DISTRICT JUDGE

APPENDIX K

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

HAYES WILLIAMS, LEE D. STEVENSON,
ARTHUR MITCHELL, JR. AND
LAZARUS D. JOSEPH, JR.

VERSUS — CIVIL ACTION

JOHN J. McKEITHEN, GOVERNOR OF THE STATE OF LOUISIANA;
LOUIS M. SOWERS, DIRECTOR OF THE LOUISIANA DEPARTMENT OF INSTITUTIONS;
C. MURRAY HENDERSON, WARDEN OF LOUISIANA STATE PENITENTIARY AT ANGOLA, ET AL — NUMBER 71-98

JUDGMENT AND ORDER

This suit addresses itself to alleged unconstitutional and illegal conditions and practices involved in the operation, maintenance and administration of the Louisiana State Penitentiary at Angola, Louisiana. The case was earlier referred by this Court to the United States Magistrate, acting as a Special Master, with instructions to hold hearings, conduct investigations, make Findings of Fact and Conclusions of Law, and thereafter to submit recommendations to the Court. After almost a year and a half of hearings and investigations, the Special Master submitted his Report and Recommendation to the Court on April 28, 1975. This Report was accompanied by transcripts of extensive hearings held by the Special Master. A hearing on objections to the Special Master's Report was held by this Court on May 28, 1975. After careful review of the objections made to the Special Master's

Findings of Fact and Conclusions of Law, the Court concludes that the objections made do not require alterations or changes in the Findings of the Special Master. There was no evidence presented by the objectors which would require changes in any of the Findings or Conclusions of the Special Master insofar as they relate to the specific relief required by the uncontested facts contained in the Special Master's Report. Therefore, the Court hereby accepts and adopts the Findings of Fact and Conclusions of Law contained in the "Special Master's Report" of April 28, 1975, a copy of which Findings of Fact and Conclusions of Law is attached hereto and made a part hereof, as Appendix "A".

The primary objection raised by counsel for the defendants was not directed as much at the findings of the obviously deplorable conditions existing at the Louisiana State Penitentiary as it was at the right of the Federal Court to order that something be done about them. This Court is always reluctant and indeed loathe to inject itself into areas involving the administration of State institutions. But where the evidence shows, as it so clearly does in this case, that conditions exist at Louisiana State Penitentiary at Angola, Louisiana which should not only shock the conscience of any right thinking person, but which also flagrantly violate basic constitutional requirements as well as applicable State laws, and where that evidence also shows that the State authorities, who have the power to do so, are either failing or refusing to take the necessary steps to correct those conditions, it is not only the right of the Federal Court but it is incumbent upon it to take whatever steps may

be necessary and to issue such orders as may be required and proper to assure that if the State of Louisiana continues to operate that facility, it does so in accordance with the Constitution and laws of the United States of America and in accordance with the Constitution and laws of the State of Louisiana. Therefore, recognizing the duty and obligation of the Federal Courts under the circumstances of this case, and based upon the aforementioned Findings of Fact and Conclusions of Law:

IT IS ORDERED that Edwin Edwards and Elayn Hunt, in their official capacity as Governor of the State of Louisiana and Director of the Louisiana Department of Corrections respectively, be, and they are hereby substituted as parties defendant in place of the named defendants, John J. McKeithen and Louis M. Sowers.

IT IS FURTHER ORDERED that in accordance with the written stipulation of the parties, the individual tort claims of the plaintiffs be, and they are hereby severed from the remaining claims presented herein, and in accordance with the stipulation and consent of all parties, the suit involving the individual tort claims of the plaintiffs shall be tried and decided by the United States Magistrate for the Middle District of Louisiana.

IT IS FURTHER ORDERED that the defendants, Governor Edwin Edwards, Department of Corrections Director Elayn Hunt, and Warden C. Murray Henderson, hereinafter referred to as the "defendants," their successors in office, their agents, servants, employees, representatives, and all persons whomsoever acting in concert with them, be, and they are hereby restrained

and enjoined from performing, causing to be performed, or permitting to continue, acts, practices, policies, and/or conditions found by the Special Master to exist in connection with the maintenance, operation, and administration of the Louisiana State Penitentiary at Angola, Louisiana, in violation of the First, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution or in violation of any other laws of the United States of America or of the State of Louisiana, and more specifically, those defendants, their successors in office, their agents, servants, employees and representatives, and all persons acting in concert with them are hereby *ORDERED AND ENJOINED* as follows:

IT IS ORDERED that the defendants shall provide or cause to be provided the following immediate and intermediate relief at the Louisiana State Penitentiary as Angola, Louisiana:

I. *IMMEDIATE AND INTERMEDIATE RELIEF*

1. *Increase protection of inmates by:*

(a) Bringing correctional officer staff up to a minimum of 950 within six months from date of this order.

(b) Instituting procedures immediately for the shakedown and inspection of all inmates, cellblocks, dormitories, work, educational, recreational and eating areas on at least a daily basis, and more often if deemed necessary, with a view to locating and confiscating any and all weapons, instruments or materials that

might be used by inmates to attack, assault or threaten other inmates or civilian personnel at the prison, and insisting upon strict and adequate punishment of all offenders who, after hearing, have been found to have breached penitentiary rules relating thereto.

(c) Providing for and furnishing to each correctional officer adequate communication equipment, such as walkie-talkies, in addition to telephones located in each dormitory, cellblock, work, recreational, educational and eating area, so that correctional officers may at all times and at all places have an immediate way to communicate with and seek assistance from other correctional officers in the event of a disturbance or other emergency.

(d) Assign at least two (2) correctional officers to each dormitory 24 hours each day, seven days a week, and assign additional correctional officers to those areas where prisoners have access to tools, equipment and supplies which may be used as or made into weapons.

(e) Immediately institute appropriate supervisory training programs for all correctional officers with a view to training such officers to detect and prevent the acquisition, retention and use of weapons by inmates.

(f) Immediately separate, to the extent possible now, all known overt and aggressive homosexuals from the general prison population for such time as the Warden may deem appropriate.

(g) Strictly, and forceably if necessary, prohibit all gambling, fights, and homosexual activities between inmates, and insist upon strict and suitable punishment of offenders who breach penitentiary rules relating thereto. Adequate hearings shall be accorded before punishment is inflicted.

(h) Separate by placing in cells or such other places as the Warden may direct, and for such length of time as the Warden may deem appropriate, those inmates who, after a hearing is held, are deemed to present a threat of assault and violence on other inmates or civilian personnel.

(i) Immediately provide and install such temporary housing, walls and/or fencing as may be necessary, to reduce and eliminate as far as possible the overcrowding of inmates in the dormitories and cells, and to separate inmates where necessary in work, recreational, educational and eating areas.

(j) Promptly report, in writing, to the District Attorney for the Parish of West Feliciana, any and all cases of inmate as-

saults and other acts of violence committed by inmates, including acts of rape.

(k) Continue the present policy of not assigning or using inmates as guards over other inmates and of not giving any inmate custodial responsibility of other inmates.

2. *Medical Care:*

(a) Provide immediately for the upgrading of medical services available to inmates at the Louisiana State Penitentiary and in connection therewith:

(1) Immediately employ and continue to employ such additional medical personnel as is required to make the full time medical staff at the Penitentiary consist of *at least* four (4) physicians; one (1) psychiatrist; two (2) dentists; one (1) psychologist; eleven (11) trained physician assistants; one (1) dental assistant; three (3) nurses certified as RN; one (1) x-ray and physiotherapy technician; one (1) pharmacist; one (1) laboratory technician; and two (2) medical records technicians. Each professional medical employee shall meet the requirements for licensure in the State of Louisiana. Persons who fill the positions of physician assistants, which are not subject to licensure in

the State of Louisiana, shall be qualified by their education and training to perform the type of medical services which are assigned to physician assistants by the U.S. Bureau of Prisons or shall meet the standards required of licensed practical nurses in the State of Louisiana. All medical treatment furnished to inmates shall be administered by licensed physicians or by the trained personnel here provided for, and no medical treatment shall be administered by untrained inmates. This does not prevent the supervised use of inmate personnel to supplement the civilian medical staff where such is necessary for adequate health care.

(2) Take whatever steps are necessary to ensure that every inmate in need of medical attention, either for diagnostic or treatment purposes, is seen by a qualified medical attendant when required, and by a physician when necessary.

(3) Maintain at all times an adequate supply of drugs and medical supplies. No prescriptions for medication shall be made except on a case by case basis and then only upon authorization of a physician. No prescription shall be filled, prepared or

dispensed except under the authority of and under the personal supervision of a qualified pharmacist, and no inmate shall be used or permitted to deliver drugs of any type to any person at the Penitentiary. A complete record of all drugs administered to each inmate shall be kept and a copy thereof placed in the inmate-patient's medical record. No inmate shall have access to another inmate's medical records.

(4) Take all steps necessary to ensure that the Louisiana State Penitentiary complies in every respect with all applicable regulations of the Federal Bureau of Narcotics and Dangerous Drugs.

(5) No inmate shall be harassed, punished or in any way discriminated against because he seeks medical diagnosis or treatment.

(6) Provide, within a reasonable time, to those inmates found to require them, eye glasses, dentures, and other prosthetics prescribed by a physician.

(7) Provide to each inmate such medication or other medical treatment as has been prescribed by, or approved by a staff physician until such time a

staff physician prescribes otherwise.

(8) Immediately implement a plan whereby each newly arrived inmate shall be examined by a physician within seven (7) days after arrival at the Penitentiary. Promulgate the necessary regulation to ensure that no inmate is required at any time to sign a document entitled "Consent to Operation and Other Medical Treatment" whereon the surgical procedure and the name of the person to perform the procedure is left blank.

(9) Within *sixty (60) days* from date hereof, acquire by lease or purchase, or acquire the use on a contract basis, of a sufficient number of adequately equipped ambulances to provide transportation for inmate patients within the prison area and to other institutions when necessary.

(10) Take whatever steps may be necessary to remove, *within one hundred and twenty (120) days* from date hereof, all persons confined to the psychiatric unit or units at the prison and replace them in a therapeutic environment under the direct care and supervision of a qualified physician. These inmates shall, subject to

the doctor's orders, be accorded all rights given other inmates at the prison.

3. *Maintenance, Repair, Construction and Safety:*

(a) Within *ten (10) days* from the date of this order, the Governor of the State of Louisiana, made a defendant herein, shall direct the Louisiana State Fire Marshal to immediately make a thorough inspection of all buildings and appurtenances at the Louisiana State Penitentiary to ascertain the existence, if any, of any electrical and fire hazards at the prison, together with an inspection to ascertain whether or not there exists at the Penitentiary overpopulation of inmates in any area or areas which violate the laws, rules, regulations, and standards of the State of Louisiana, the Louisiana State Fire Marshal's Office, or the National Electrical Code. A copy of the Fire Marshal's report shall be filed with this Court within *twenty (20) days* from date of this order, with copies to counsel of record herein. The report shall set forth in detail those fire, electrical, and/or overcrowding hazards, or any other hazards found to exist, which constitute an immediate threat to the health, life or safety of the inmates or prison personnel, and shall state specifically what

steps must be taken to eliminate the hazard. The same standards of safety shall be applied to the Penitentiary as are required by law to be applied by the Fire Marshal to other public buildings and facilities in Louisiana. The defendants shall, immediately upon receipt of the Fire Marshal's report, and in no event more than *twenty (20) days* thereafter, take the necessary steps to eliminate completely the hazards found by the Fire Marshal to exist, whether the hazard results from electrical defects, fire hazards, or overcrowded conditions in any particular building or location.

(b) The defendants shall, within *sixty (60) days* from the date of this order, prepare and implement a plan approved by the Louisiana State Fire Marshal for the evacuation, care and treatment of inmates and prison personnel in the event of a fire, explosion, or natural disaster which might occur at the Penitentiary. A copy of the plan, approved by the Fire Marshal, shall be filed with the Court within said *sixty (60) day* period.

(c) The defendants shall cause to be strictly enforced all laws and prison regulations prohibiting the damaging or destruction or public property and shall see that adequate punishment is inflicted upon any inmate who, after hearing, is found to be

guilty of willfully damaging or destroying any of the buildings, appurtenances thereto, or any other property belonging to or under the control of the Louisiana State Penitentiary.

4. *Food and Sanitation:*

(a) Within *ten (10) days* from the date of this order, the Governor of the State of Louisiana shall direct the Louisiana Department of Health to immediately conduct a comprehensive inspection of all buildings and areas of the Louisiana State Penitentiary to ascertain whether or not there exists any health, safety and sanitation hazards which violate the laws, rules or regulations of the State of Louisiana, the Louisiana Department of Health, or the Louisiana Occupational Safety and Health Act. The Department of Health shall, within *twenty (20) days* thereafter, file with this Court, with copies to counsel of record herein, a detailed report setting forth with particularity any and all conditions found by it to exist at the Penitentiary which constitute health, safety and/or sanitation hazards which constitute or may constitute a threat to the health, life or safety of the inmates or prison personnel. The Department of Health shall apply the same standards to its inspection of the Penitentiary as is re-

quired by the laws of the State of Louisiana to be applied to other public buildings and food dispensing facilities in Louisiana. This inspection shall cover buildings, shops, recreational areas, work areas, kitchens, food preparation and serving, food storage areas, dining areas, toilet and bathing facilities, sewage facilities, and all other aspects of the entire penitentiary facility that have or may have effect on the life, health and safety of the inmates and prison personnel. Immediately upon receipt of the report from the Louisiana Department of Health, the defendants shall take whatever steps may be necessary to completely correct any and all hazardous conditions found by the Department of Health to exist. In no event shall the defendants permit such conditions to continue to exist for a period in excess of *sixty (60) days* following receipt of the report of the Louisiana Department of Health.

5. *Elimination of Racial Discrimination and Segregation:*

(a) The defendants, their employees, agents and representatives, and all persons acting in concert with them, are hereby enjoined from engaging in racial discrimination of any nature, in the operation or administration of the Louisiana State

Penitentiary. This prohibition applies to all phases and aspects of the prison operation and includes specifically, but not by way of limitation or exclusion:

(1) Housing, dining, recreational, work shops, yards, and all other prison facilities.

(2) Job and work assignments and promotions or demotions made in connection therewith.

(3) Classification of inmates.

(4) All prison organizations.

(5) Vocational and educational training.

(6) Hiring, firing, selecting, recruiting, training, promoting prison staff, guards, and other civilian personnel at the prison.

The defendants shall immediately take whatever steps may be necessary to correct, overcome and erase any effects of past racial discrimination, and in the future, to maintain and operate the Louisiana State Penitentiary as a completely integrated facility. Those provisions of *La. R.S. 15:725* and *La. R.S. 15:854* which require separate housing and sanitary facilities for black and white inmates *are hereby declared to be unconstitutional* and compliance therewith by the defendants, their employees, agents, representatives or any other persons acting in concert with them is hereby enjoined.

6. *Religious Freedom:*

(a) The defendants, their employees, agents, representatives, and anyone acting in concert with them are hereby enjoined and prohibited from in any manner discriminating against any inmate because of his religion or religious beliefs. No restrictions shall be placed on the free exercise of religious freedom by the inmates unless it is specifically determined by the Warden that the religious practice in question presents a threat to the security, discipline, and good order of the institution.

7. *Censorship of Mail*

(a) The defendants, and any and all persons in privity with them, shall not open or otherwise interfere with any outgoing special correspondence of inmates. Special correspondence is defined herein as any mail to:

(1) any attorney licensed to practice law in any state or in the District of Columbia;

(2) all state and federal courts;

(3) the President and Vice President of the United States; all Senators and Representatives of the United States Congress; the United States Attorney General's Office, including the local United States Attorney's Office;

(4) the Governor and Lieutenant Governor of Louisiana; all State legislators; the State Attorney General's Office; the Department of Corrections; the Parole Board; Public Defender's Office; and the Parish District Attorneys.

(b) The defendants, and all persons in privity with them, shall be, and they are hereby prohibited from reading or otherwise interfering with any incoming mail from judges of the federal and state courts and any attorney, including United States Attorneys and District Attorneys, except to open and inspect such mail, in the presence of the inmate addressee, whenever the prison officials have reasonable grounds to suspect escape attempts or to discover drugs, weapons, contraband, or other material expressly prohibited by state or federal laws or by prison rules.

8. *Conditions of Punitive or Administrative Confinement and Procedural Due Process:*

(a) The defendants shall continue to apply the procedures and standards for punitive or administrative confinement that are approved and ordered by this Court in the case of *Ralph v. Dees*, Civil Action No. 71-94, Middle District of Louisiana, decided by this Court on March 13, 1975, which procedures and standards the

Court there found to meet Procedural Due Process requirements.

9. *Report on Immediate and Intermediate Relief:*

(a) Within *one hundred and eighty (180) days* from date hereof, the defendants shall file with this Court, with copies to counsel of record herein, a *detailed* report, certified by the Director of the Department of Corrections, setting forth the steps taken to comply with this order for Immediate and Intermediate Relief. This report shall specifically set forth any areas of noncompliance, giving detailed reasons therefor. If the report shows areas of noncompliance, a hearing will be held in connection therewith, after which the Court will impose such sanctions on the defendants as it deems necessary and proper.

10. *Long Range Planning and Relief:*

(a) Within *one hundred and eighty (180) days* from date hereof, the defendants shall file with the Court, with copies to counsel of record herein, a comprehensive report pertaining to the proposed long range operation of the prison system in Louisiana, said report to cover:

(1) Detailed plans for the long range improvement in the security and protection of inmates and civilian personnel at the Louisiana State Penitentiary.

(2) Detailed plans for the decentralization of the Louisiana State Penitentiary and for the establishment of several smaller facilities throughout the state, together with *specific timetables and funding plans* for such decentralization. In the event a complete decentralization is not absolutely assured within two years from date hereof, and in the event the actual decentralization is not to commence within one year from date hereof, then the report shall contain *specific plans, with specific timetables*, for:

(a) Construction of additional cells at Angola.

(b) Construction of additional dormitories at Angola.

(c) Proposed changes in inmate classifications, housing, and work assignments.

(d) Estimate of additional security personnel and equipment needed in the future to ensure the continued safety and inmates and prison personnel.

(3) Whether or not the personnel and equipment ordered as immediate relief by this order in the area of medical care has proven satisfactory, and if not, specific plans for the long range

furnishing of adequate health care to the inmates at the Penitentiary.

(4) A statement as to whether or not the steps taken pursuant to this order for the immediate elimination of electrical and fire hazards have been adequate, and whether or not the steps taken pursuant thereto to compel immediate compliance with the Fire, Health and Sanitation laws of the State of Louisiana have been adequate to protect the life, safety and health of the inmates and prison personnel at Angola. If it is determined that the immediate and intermediate steps have not been adequate for long range operations, the report shall contain a detailed plan for the long range accomplishment of these objectives.

(5) A specific plan for the regular and periodic inspection of all facilities at Angola by the State Fire Marshal and the State Department of Health and for the furnishing of reports by those agencies to this Court at periodic intervals.

(6) The feasibility of reducing inmate population at Angola by housing certain classes of inmates, (i.e., first offenders, inmates convicted of non-violent crimes, inmates in need of

mental health care) at locations other than Angola, including the possibility of arrangements with other state or federal penitentiaries; instituting a system of half-way houses for those convicted of minor offenses; utilization of work-release, parole and probation programs.

(7) In general, and in addition to the above specified items, the report shall set forth in detail specific plans for the long range operation of the Louisiana State Penitentiary in such a fashion as to eliminate completely the unconstitutional and illegal practices and conditions heretofore found to exist.

II. *GENERAL PROVISIONS*

1. In order to ensure that this order is fully and promptly complied with, and in order to immediately eliminate as far as possible the hazardous and patently unconstitutional conditions presently existing at the Louisiana State Penitentiary, this Court does hereby declare and find that an extreme public emergency as defined in *La. R.S. 38:2211(d)* does exist at the Louisiana State Penitentiary at Angola, Louisiana, insofar as the need for construction of buildings, repairs to buildings and facilities, maintenance of buildings and other facilities, fencing, alteration of buildings, facili-

ties, and other structures is concerned, and in connection therewith, and in view of this finding by the Court, and pursuant to the provisions of *La. R.S. 38:2211(d):*

IT IS ORDERED that the defendants shall not be required to advertise and let out for bids any construction, repair, alteration or maintenance job at the Louisiana State Penitentiary at Angola that exceeds or might exceed the sum of $2,500.00 as is ordinariiy required by *La. R.S. 38:2211(a)* where no extreme public emergency exists. The purpose of this order is to permit and encourage the defendants to use to the fullest extent possible inmate labor in the repair, construction, erection, maintenance, alteration or renovation of buildings and other facilities and structures at the Penitentiary.

2. While the method of funding the things required to be done by this order is a matter to which the defendants and other responsible state officials must direct their attention, the Court does urge the defendants to seek whatever financial assistance might be available from the Law Enforcement Assistance Administration of the United States Department of Justice, which agency was established by the Congress ". . . to encourage States . . . to develop and implement programs and projects for the con-

struction, acquisition, and renovation of correctional institutions and facilities, and for the improvement of correctional programs and practices." *42 U.S.C. §3750.* It might well be that members of the Louisiana Congressional delegation, if called upon, could assist in this endeavor.

3. This Court hereby retains jurisdiction over this matter for the purpose of receiving the reports called for herein and for the purpose of issuing such additional orders as it may from time to time deem necessary and proper.

4. IT IS FURTHER ORDERED that a copy of this order be served in accordance with law upon the defendants, Governor Edwin Edwards, Department of Corrections Director Mrs. Elayn Hunt, and Warden C. Murray Henderson, and upon William Guste, the Attorney General for the state of Louisiana, and that this suit be dismissed as to all other named defendants.

Baton Rouge, Louisiana, June 10, 1975.

/s/ E. GORDON WEST
UNITED STATES DISTRICT JUDGE

APPENDIX L

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

HAYES WILLIAMS, LEE D. STEVENSON, ARTHUR MITCHELL, JR. AND LAZARUS D. JOSEPH, JR.

VERSUS

JOHN J. MCKEITHEN, GOVERNOR OF THE STATE OF LOUISIANA, LOUIS M. SOWERS, DIRECTOR OF THE LOUISIANA DEPARTMENT OF INSTITUTIONS, C. MURRAY HENDERSON, WARDEN OF LOUISIANA STATE PENITENTIARY AT ANGOLA, ET AL.

CIVIL ACTION NUMBER 71-98

SPECIAL MASTER'S REPORT

This suit involves the alleged unconstitutional conditions and practices in the maintenance, operation and administration of the Louisiana State Penitentiary at Angola, Louisiana. The United States Magistrate was appointed Special Master in this matter on November 26,1973. Now, after carefully considering the pleadings, depositions, stipulations of counsel, and the jurisprudence and after having made personal judicial inspections of the Louisiana State Penitentiary, I submit the following findings of fact, conclusions of law and recommendations:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

HISTORY OF THE CASE

This suit was originally filed by Hayes Williams, Lee D. Stevenson, Arthur Mitchell, Jr. and Lazarus D.

Joseph, Jr., inmates at the Louisiana State Penitentiary at Angola, Louisiana, pursuant to 42 U.S.C. 1981 and 1983. Named as defendants in the original complaint were John J. McKeithen, former Governor of the State of Louisiana, Louis M. Sowers, the former Director of the Louisiana Department of Corrections, C. Murray Henderson, the Warden, and six other prison officials. The Governor, Director and Warden are hereinafter referred to as the "defendants." The plaintiffs alleged that the defendants were depriving them of their rights under the United States Constitution and Sections 1981 and 1983 of the Civil Rights Act. In addition to seeking monetary damages, the plaintiffs also sought declaratory and injunctive relief. Jurisdiction was invoked under 28 U.S.C. 1331 and 1343. Supplemental and amended complaints were filed by plaintiffs on August 11, 1971 and August 10, 1973. In general, the plaintiffs alleged that the defendants, by their methods of prison administration and practices, have deprived the inmates of rights, privileges and immunities secured to them by the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments, by 42 U.S.C. 1981 and 1983, and by certain state laws. The complaint also alleged that the Negro inmates have been segregated and discriminated against in violation of the Equal Protection Clause of the Fourteenth Amendment.

On May 21, 1973, the United States was granted leave to intervene in the suit pursuant to 42 U.S.C. 2000(h) (2). In the original complaint in intervention, the United States sought to enjoin racial discrimination in the operation of the Angola prison. On June 29, 1973, the

United States District Court sua sponte ordered the United States to participate as amicus curiae on "those issues concerning the conditions of inmate confinement and treatment." Specifically, the plaintiffs in this suit allege that at the time the suit was filed the defendants have confined them in disciplinary segregation under conditions which did not provide adequate food, bedding, light and necessary personal hygiene items; have failed to provide them proper medical care and treatment by professionally trained personnel using adequate equipment and supplies; have censored attorney-client mail; have not permitted them freely to practice their religion; have subjected them to unnecessary risk of harm at the hands of other inmates because of the inadequate security staff at the Angola prison; and have confined them under the conditions which do not meet minimum recognized standards of health, safety and sanitation.

In order to fully develop the record in this case, extensive pre-trial discovery was conducted by the parties. Inspections were made of the prison by the Court and by various experts. Numerous pre-trial conferences were also held to narrow the issues presented in this case.

This matter was tried before the United States Magistrate on December 3, and 4, 1973. Thereafter, an additional hearing was held before the Magistrate on December 14, 1973, in connection with a motion for emergency relief sought by the United States. On December 17, 1973, the United States Magistrate submitted his report to the Court on the Government's motion for emergency relief. The interim report of the Magis-

trate recommended that Dorm 3 of Camp H be closed and that the defendants remove the sewage that had accumulated under the dining hall and kitchen. Certificates of compliance as to those matters have been filed by the defendants in the record. The other requests for emergency relief were in the process of being corrected prior to the hearing or were specifically reserved for later consideration.

Upon completion of the emergency hearing, the Magistrate ordered a transcript of the record to be prepared and further ordered the parties to submit proposed findings of fact, conclusions of law and recommendations. Numerous post-trial conferences were then held by the Magistrate in an attempt to resolve the issues presented herein by a consent judgment. Such efforts, though time consuming, have proved futile. The Magistrate, being of the opinion that further delays in this matter are unwarranted, submits the following report.

PRELIMINARY STATEMENT

It has been and is the policy of the Middle District of Louisiana to give the officials in charge of the Louisiana State Penitentiary great latitude on running the prison. As a result, the Court has been reluctant to interfere with the internal operation and administration of the prison except in extreme cases such as that now before the Court.

The record in this case is voluminous. Every effort was made to allow the parties to fully develop the facts necessary to properly present the matter to the Court for decision. The spirit of cooperation exhibited by the

attorneys in the case, prison officials, and in some instances, the inmates, is commendable. As a result of the cooperation between counsel and the authorities in charge of the prison, some of the conditions complained of at the time the suit was filed were eliminated during the pendency of the suit. However, many of the conditions complained of, some very serious in nature, still remain to be corrected. No one disputes the fact that there are many conditions at Angola that must be eliminated to protect the lives and safety of the inmates incarcerated there and the civilian personnel who work at Angola. The question is not whether the conditions exist, but when and in what manner are these conditions to be eliminated. The time has simply come to stop talking about and criticizing the conditions that exist at the Angola prison. Immediate action must and shall be taken to correct any constitutional infirmities found at the Angola prison. Many excuses have been made in the past in connection with the cause of or the failure to eliminate those conditions which endanger the lives and safety of both the inmates and civilian personnel at the prison—lack of funds, lack of support from state government and from the public, the remoteness of the location of the prison, and lack of a sufficient number of trained personnel.

It was and is Louisiana's decision to operate a state prison for men, and Louisiana has chosen to locate that facility at Angola, Louisiana, However, having made the decision to operate a state prison at Angola, Louisiana, the state of Louisiana must do so without depriving inmates of the rights guaranteed to them by the federal constitution and state law.

During the course of the post-trial conferences, the Magistrate was advised of recent decisions made to appoint a committee to study the decentralization of Angola. A committee has also been named to study the medical facilities and capabilities of the prison. Fifty new correctional officer positions have recently been created and funded, and those positions have been filled by the Warden. Despite these positive steps taken by the defendants, this Court does not feel any useful purpose would be gained in delaying the implementation of this order until a later date. Numerous post-trial conferences have failed to yield any binding agreement from the parties that would result in a consent decree. None is anticipated.

Therefore, it is this Court's decision to go forward with this suit. Many of the facts have been stipulated to by the parties. These stipulated facts are set forth in the appendix of this report. The findings of fact that follow are made by the Magistrate after considering the evidence and stipulations of counsel and having made judicial inspections at the Louisiana State Penitentiary.

FINDINGS OF FACT

IN GENERAL

1. The Louisiana State Penitentiary is located at Angola, Louisiana, in the Parish of West Feliciana. There is little doubt the prison is located in a very remote section of the State. The prison facility is spread out in all directions on the vast acreage with the prison compound. In addition to the administration building, the prison also consists of Camps A, F, H and I. These camps have dormitories as well as cells. Kitchen facilities

are also located in each camp. Most of the camps have recently been remodeled. In addition to the camps, there are also located on the prison grounds the Reception Center and Admitting Unit, which also houses death row and maximum security prisoners. The New Prison consists of dormitories and cell blocks, in addition to educational, recreational and eating facilities. Also located on the prison grounds is the Angola General Hospital.

2. At the time the suit was filed there were over *3,000* inmates housed at the Angola prison facility. Since the trial of this case the population has increased to approximately *4,000* inmates. Some 71% of the inmates are black. Only male prisoners are incarcerated at the prison.

3. Agriculture is an important industry at the prison although other trades have also been established.

4. The Louisiana State Penitentiary is one of the prison facilities operated by the Louisiana Department of Corrections. The Director of the Department of Corrections is appointed by the Governor. Elayn Hunt serves as the present Director of the Louisiana Department of Corrections having been appointed by Governor Edwin Edwards. The Board of Corrections, consisting of seven members appointed by the Governor, has the statutory authority to determine the policy of the Department of Corrections.

5. After conviction, a person is committed to the custody of the Department of Corrections, which then designates the prison the inmate shall be committed to.

6. C. Murray Henderson, the Warden of the Louisi-

ana State Penitentiary, is charged with responsibility for the general management, supervision and control of inmates confined to the penitentiary.

SECURITY

7. One of the most serious and deplorable conditions that exist at Angola is the lack of adequate security provided to inmates from physical attacks and abuses by other inmates. The number of stabbings and deaths reported at the prison since 1971 is alarming. At the time of the trial there had been over 270 stabbings and 20 deaths by stabbings in less than three years. The number of stabbings and deaths has increased since this case was tried.

8. In addition, there have been numerous forceable rapes committed by inmates on other inmates. For various reasons, the exact number of forceable rapes or other physical abuses will never be known.

9. There are many causes for the physical attacks and abuses that occur at Angola. Inmates are housed in terribly overcrowded dormitories. The prison does not have enough cells to house those inmates who present danger to other inmates.

10. There is a critical shortage of correctional officers at the prison. Because of the insufficient number of correctional guards, the inmates cannot be properly supervised and weapons cannot be detected and confiscated. Inmates have easy access to machinery and other equipment to manufacture weapons and to objects and materials to use as weapons because of the lack of proper supervision.

11. Furthermore, the security officers simply do not have proper equipment to ensure that inmates will not be attacked by other inmates.

12. Fights involving homosexuals and gambling debts also lead to attacks on inmates. This problem has grown to serious proportions and will continue to become more serious unless curtailed by prison officials.

13. The use of inmates as guards has been discontinued at the Angola prison. No inmates have been used as guards since July 15, 1973. The practice of providing inmates with custodial authority over other inmates caused many stabbings and other injuries, including the death of inmates.

MEDICAL CARE AND FACILITIES

14. The defendants have failed to provide the inmates with proper medical care and treatment by professionally qualified and trained medical personnel using adequate medical facilities, equipment and supplies.

15. The medical staff at the prison has been and continues to be understaffed. Untrained inmates have been used to fill positions that should have been filled by professionally trained personnel.

16. At the time of the trial, there were four full time physicians at the prison. At the present time, four physicians remain on the staff. The prison has at least one dentist and has only recently hired a pharmacist. The remoteness of the prison facility and salary schedules are the principal causes of the lack of an adequate medical staff.

17. The physicians have an inadequate staff of trained supporting medical personnel to assist them in providing proper medical care to the inmates.

18. Although there is a hospital located on the prison grounds, it lacks many items of equipment needed to perform surgery and treat emergencies. As a result, inmates have to be sent to charity hospitals located in Baton Rouge and New Orleans for surgery and other major illnesses. There is a critical shortage of beds available at the charity hospitals for treatment of inmates.

19. There are no facilities available at the prison to properly house and treat psychiatric patients. These patients are incarcerated in a so called psychiatric unit which consists of nothing more than overcrowded cells. Because of the lack of proper facilities and supervising staff, these psychiatric patients do not receive adequate medical care, exercise, and other treatment that would ordinarily be prescribed for a psychiatric patient.

20. At the time of the suit, there were very serious deficiencies in the operation of the pharmacy and very little, if any, control in the dispensing of drugs. Substantial progress has been made to correct these deficiencies.

21. There was only one vehicle available for use as an ambulance, and it was improperly equipped. Because of the number of inmates incarcerated at the prison and the remoteness of the location from major medical facilities, one ambulance is not sufficient to provide adequate transportation for sick or injured inmates to the prison hospital or to hospitals outside the prison.

ELECTRICAL AND FIRE SAFETY

22. The record is replete with evidence of violations of state fire and safety regulations in every area of the penitentiary. Although the Director of the Department of Corrections advised the Governor on September 11, 1973, of the violations and the estimated cost required to eliminate the violations, no funds have been provided to correct the violations, nor have all of the violations been eliminated. Inmates are housed and civilian personnel work in many of the areas where the violations exist.

23. It is a well established fact that the State Fire Marshal applies a separate standard applicable only to the Angola prison in determining whether or not a facility should be condemned until the violations have been corrected.

24. There is also evidence of many electrical hazards in all areas of the prison. Many of these electrical hazards remain.

25. There are many areas in the prison where fire extinguishers are not available or which are not in proper operating condition. In addition, there was no plan in existence for the evacuation, care and treatment of inmates and civilian personnel in the event of a fire, explosion or other natural disaster which might occur at the prison.

26. Many of the fire and electrical hazards constitute an immediate threat to the life and safety of inmates incarcerated at the prison and civilian personnel working there.

MAINTENANCE, REPAIR AND CONSTRUCTION

27. The defendants have not been able to provide an adequate maintenance and repair program at the prison because of lack of funds and lack of trained personnel. In addition, R.S. 38:2211(a) requires that all repair, maintenance and construction jobs that exceed $2,500.00 must be placed out for public bid. As a result, the prison authorities are unable to use available inmate labor to maintain and repair existing facilities or build new facilities. Thus, prison officials are unable to obtain proper funding and also cannot use inmate labor to perform the tasks required for major repairs, maintenance and construction jobs.

FOOD AND SANITATION

28. At the time this suit was filed, there was evidence of many violations of state health regulations. Raw sewage had not only accumulated under the main kitchen at the prison, but was also pumped directly into the Mississippi River. The sewage has since been removed from the kitchen area. Furthermore, completion of the new sewer system was in its final stages of completion at the time of trial.

29. The raw sewage accumulation over a period of some 20 years created a serious rodent problem. As a result, the rodent eradication program was insufficient to eliminate the rodents at the prison.

30. Food was not always prepared, served and stored in a proper manner and in accordance with regulations and acceptable standards.

RACIAL SEGREGATION AND DISCRIMINATION

31. Prior to the institution of this suit, it had been the policy of the Louisiana State Penitentiary at Angola, Louisiana, to maintain a prison segregated by race. However, during the pendency of this suit, prison officials, with voluntary inmate participation, assistance and cooperation, integrated the prison facilities, activities and civilian personnel. Thus, on December 3, 1973, the defendants stipulated and agreed to integrate the Angola prison by June 1, 1974. This integration has been accomplished by prison officials.

RELIGIOUS FREEDOMS

32. The record further reveals that at the time the suit was filed, certain inmates were discriminated against because of their religious beliefs and practices. Some religious magazines were denied the inmates. This policy has now been changed. The defendants have now agreed to allow inmates to practice their religion so long as the religion practiced does not present a threat to the security, discipline and good order of the prison.

CENSORSHIP OF MAIL

33. This is another area where prison officials have attempted during the pendency of this suit to correct deficiencies in the policies followed by the prison officials prior to the institution of this suit. It was the practice of the prison authorities to open and censor all inmates' mail, including mail to and from attorneys. Two of the stated purposes of opening the mail were to inspect the mail for contraband and to maintain security at the prison. This Court recognizes the very serious problem

the prison officials have in trying to maintain security and to stop the input of drugs, weapons and other contraband into the prison. According to the evidence produced at the trial, the policy of censoring all mail has recently been revised in accordance with the recent decisions rendered by the United States Supreme Court. As a result of judicial inspections made at the prison and post-trial conferences held, the Court is also aware of efforts of the prison officials to continually update the mail regulations at the prison. The current regulations pertaining to the censorship of mail at the prison will be filed in the record in accordance with the order to be issued by the Court.

CONDITIONS OF PUNITIVE OR ADMINISTRATIVE CONFINEMENT AND PROCEDURAL DUE PROCESS

34. As a result of the decision rendered in *Ralph v. Dees*, ____ F.Supp ____ (M.D. La. 1974), the Court refused to allow any evidence to be presented regarding the issue of punitive or administrative confinement and Procedural Due Process. In the *Ralph* case, this Court held that the rules and regulations now being used at Angola in disciplinary actions and lockdown procedures "meet or exceed the minimum constitutional requirements set forth by the United States Supreme Court and required by the Due Process Clause of the Constitution." The procedures adopted in the *Ralph* case are still being followed by the prison officials, and have proven to be workable. Therefore, this issue has been rendered moot.

CONCLUSIONS OF LAW

1. This suit was filed pursuant to 42 U.S.C. 1983. The Court has jurisdiction under 28 U.S.C. 1331(a) and 28 U.S.C. 1343(3) and (4). The Court also has pendent jurisdiction over those issues of state law that arise from the same operative facts. *Gates v. Collier*, 349 F.Supp. 881 (N.D. Miss. 1972) aff. 501 F.2d 1291 (5 Cir. 1974).

2. A statutory three judge court convened pursuant to 28 U.S.C. 2281 is not required herein. A single judge district court has proper jurisdiction to dispose of all of the issues pending before the Court. *Wolff v. McDonnell*, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d ___ (1974); *Gates v. Collier, supra, Newman v. State of Alabama*, 503 F.2d 1320 (5 Cir. 1974); *Sands v. Wainwright*, 491 F.2d 417 (5 Cir. 1973), cert. denied *Guajardo v. Estelle*, ___ U.S. ___, 94 S.Ct. 2403, 40 L.Ed.2d 771 (1974); *Leonard v. Mississippi State Probation and Parole Board*, ___ F.2d ___ (5 Cir. 1975); *Finney v. Arkansas Board of Corrections*, ___ F.2d ___ (8 Cir. 1974).

3. While this suit is not a Rule 23 class action suit, the very nature of the rights plaintiffs seek to vindicate requires that the decree and order run to the benefit not only of the plaintiffs, but also for all persons similarly situated. *Bailey v. Patterson*, 323 F.2d 201 (5 Cir. 1963), cert. denied, 376 U.S. 910; *Cruz v. Beto*, 405 U.S. 319, 92 S.Ct. 1079, 31 L.Ed.2d 263 (1972).

4. Governor Edwin Edwards and Elayn Hunt have been properly substituted as defendants in their official capacities as Governor of the State of Louisiana and Director of the Louisiana Department of Corrections, re-

spectively. Rule 25 (d), Federal Rules of Civil Procedure; *Gates v. Collier, supra.*

5. This Court has in the past given the officials in charge of the Louisiana State Penitentiary at Angola, Louisiana, great latitude in running the prison and has been reluctant to interfere with the internal operation and administration of the prison except in extreme cases. *Sinclair v. Henderson*, 331 F.Supp. 1123, (E.D. La. 1971) aff. 435 F.2d 125 (5 Cir. 1970).

6. Lawful imprisonment necessarily makes unavailable many rights and privileges of the ordinary citizen. *Price v. Johnston*, 334 U.S. 266, 68 S.Ct. 1049, 92 L.Ed. 1356 (1948); *Wolff v. McDonnell, supra.* However, it is well settled that prisoners do not lose all their constitutional rights when they pass through the jailhouse door. *Wolff v. McDonnell, supra, Gates v. Collier, supra; Newman v. Alabama, supra; Courtney v. Bishop*, 409 F.2d 1185 (8 Cir. 1969). As the United States Supreme Court recently noted in the *Wolff* case: "There is no iron curtain drawn between the Constitution and the prisons of this country." 94 S.Ct. at 2974. And, when a "prison regulation or practice offends a fundamental constitutional guarantee, federal courts will discharge their duty to protect constitutional rights." *Procunier v. Martinez*, 416 U.S. 396, 405, 94 S.Ct. 1800, 40 L.Ed.2d 224 (1974); see also: *Johnson v. Avery*, 393 U.S. 483, 89 S.Ct. 747, 21 L.Ed.2d 718 (1969).

7. After carefully reviewing the voluminous record made in this case, and after making a number of personal judicial inspections of the Louisiana State Penitentiary at Angola, Louisiana, I must conclude that the Louisiana

State Penitentiary at Angola, Louisiana, in certain material respects, has been and continues to be, maintained, operated, and administered contrary to Louisiana law and in a manner violative of the rights secured by the United States Constitution.

8. The prohibition against cruel and unusual punishment contained in the Eighth Amendment is applicable to the State of Louisiana through the Due Process Clause of the Fourteenth Amendment. *Robinson v. California*, 370 U.S. 660, 82 S.Ct. 1417, 8 L.Ed.2d 758 (1962); *Gates v. Collier, supra; Newman v. Alabama, supra.* Furthermore, it is well settled that the Eighth Amendment does not have a fixed and settled test for determining the limits thereof. *Gates v. Collier, supra; Jackson v. Bishop*, 404 F.2d 571 (8 Cir. 1968). Thus, the United States Supreme Court has stated that the Eighth "Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." *Trop v. Dulles*, 356 U.S. 86, 101, 78 S.Ct. 590, 2 L.Ed.2d 630 (1958). Nor is the prohibition of the Eighth Amendment limited to specific acts directed at selected individuals. Therefore, the adequacy of conditions of confinement of prisons, such as security and protection of inmates, medical treatment and facilities, physical facilities and food and sanitary conditions is "clearly subject to Eighth Amendment scrutiny." *Gates v. Collier, supra*, 501 F.2d at 1302. See also. *Newman v. Alabama, supra; Campbell v. Beto*, 460 F.2d 765 (5 Cir. 1972); *Novak v. Beto*, 453 F.2d 661 (5 Cir. 1971), rehearing denied en banc, 456 F.2d 1303 (5 Cir. 1972); *Holt v. Sarver*, 309 F.Supp. 362 (E.D. Ark. 1970), aff. 442 F.2d

304 (8 Cir. 1971); *Finney v. Arkansas Board of Corrections, supra.*

9. The Louisiana Legislature also has adopted certain laws pertaining to the prison facilities, conditions of confinement and treatment of inmates at the Louisiana State Penitentiary at Angola, Louisiana. Thus, the Louisiana Legislature has declared that all "jails, prisions, lockups and camps and all facilities, units, and rooms of such jails, prisons, lockups and camps where prisoners are detained or confined must meet standards of health and decency which shall be established by the State Department of Health." L.R.S. 15:751. The president of the Louisiana Department of Health is required under L.R.S. 15:751 to "periodically inspect all correctional institutions to determine if such institutions are in compliance with the established standards." Louisiana law also required that state prison to be "of sufficient size and strength to hold and securely keep the prisoners contained therein." L.R.S. 15:752. And, the buildings of the prison "shall be fire-proof, screened, properly venilated, sufficiently lighted, by day and night, adequately heated, and connected with water and sewer." L.R.S. 15:752. In addition, L.R.S. 15:753-756 provide for the construction of cells, painting, and cleaning regulations. R.S. 15:760 states that where "large numbers of prisoners are confined the proper authority in charge shall provide hospital quarters with necessary arrangements, conveniences, attendants, etc." The Louisiana Legislature has also declared that no "person shall be confined in jails, prisons, or lockups not built or maintained in accordance with the provisions" of L.R.S. 15:751-760

previously set forth above. L.R.S. 15:762. Whenever state prison authorities fail to comply with L.R.S. 15:751-760, the state Board of Health "shall institute" proper legal proceedings to enjoin, restrain, and prohibit "the authorities in charge of the state prison or camp from using the prison, lockup or camp for the purpose of confining prisoners' until the provisions of L.R.S. 15:751-760 "have been complied with." L.R.S. 15:763.

The Louisiana Legislature, in creating the Louisiana Department of Corrections in 1968, authorized the department to establish a diagnostic and treatment center, "which shall undertake medical, educational, psychiatric, and social studies of persons committed to facilities under the jurisdiction of the department and to provide for the training of such psychiatrists, neurologists, special educators, psychologists, nurses, technicians, social workers, occupational therapists, physicians, and other professional trainees whose services shall be utilized in the operation" of the center. L.R.S. 15:827. In addition, persons "committed to the institutional care of the department shall be treated in a humane manner." L.R.S. 15:828. The Louisiana Legislature has also authorized the Department of Corrections to "establish resources and programs for the treatment of mentally ill and mentally retarded inmates, either in a separate facility or as part of other institutions or facilities of the department." L.R.S. 15:830. Finally, under the provisions of L.R.S. 15:831, the "director of corrections shall establish and shall prescribe standards for health, medical, and dental services for each institution, including preventive, diagnostic, and therapeutic measures on

both an outpatient and a hospital basis, for all types of patients."

10. The defendants have the obligation to ensure that inmates are not subjected to any punishment beyond that which is necessary for the orderly administration of the Angola prison. Thus, the defendants possess broad discretion in the area of conditions of confinement. However, the defendants in this case have willingly or unwillingly abused their discretion.

11. Therefore, it is my opinion that the confinement of inmates at the Louisiana State Penitentiary under conditions that threaten their physical health and safety because of the failure of the defendants to provide adequate protection against physical assaults and abuses by other inmates, by the placement of an excessive number of inmates in the dormitories without adequate classification or supervision, by the failure to hire a sufficient number of security officers to supervise the inmates, by the failure to provide adequate equipment to security personnel and a sufficient number of cells to lock up those inmates who present a clear danger to other inmates, by the failure to detect and remove weapons and other materials used by inmates to inflict or threaten injury or death to other inmates, and by the failure to remove electrical, fire, safety and health hazards at the prison not only constitute a clear and direct violation of Louisiana's laws and regulations but also constitute cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution. The Court recognizes that each of the above factors and conditions considered separately may not rise to

constitutional dimensions. However, the "effect of the totality of the above factors and conditions is the infliction of punishment on inmates violative of the Eighth Amendment." *Gates v. Collier, supra,* 501 F.2d at 1309. See, also: *Hamilton v. Schiro.* 338 F.Supp. 1016 (E.D. La. 1970), order entered, *Hamilton v. Landrieu,* 351 F.Supp. 549 (E.D. La. 1972); *Holt v. Sarver, supra; Jones v. Wittenberg,* 323 F.Supp. 93 (N.D. Ohio 1971), aff. *Jones v. Metzger,* 456 F.2d 854 (6 Cir. 1972).

12. It is my further opinion that the failure of the defendants to provide the inmates at the Angola prison with proper medical care and treatment by professionally qualified and trained personnel using adequate medical facilities, equipment and supplies constitutes cruel and unusual punishment in violation of the Eighth Amendment and a denial of due process in violation of the Fourteenth Amendment to the United States Constitution. *Newman v. Alabama, supra; Gates v. Collier, supra; Campbell v. Beto, supra; Holt v. Sarver, supra; Coppinger v. Townsend,* 398 F.2d 392 (10th Cir. 1968); *Inmates of Suffolk County Jail v. Eisenstadt,* 494, F.2d 1196 (1st Cir. 1974).

13. Furthermore, the Court specifically finds that the confinement of inmates who are in need of psychiatric care and treatment under conditions such as those this Court has found to exist in the so called psychiatric unit of the Louisiana State Penitentiary constitutes cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution.

14. The segregation of inmates by race, unrelated to prison security and discipline, violates the Equal Pro-

tection Clause of the Fourteenth Amendment. *Lee v. Washington*, 390 U.S. 333, 88 S.Ct. 994, 19 L.Ed.2d 1212 (1968), *Cruz v. Beto, supra*. The Equal Protection Clause also prohibits racial discrimination in the administration of the Angola prison. *Gates v. Collier, supra; Owens v. Brierly*, 454 F.2d 640 (3rd Cir. 1971); *Hold v. Sarver, supra*. Since the institution of this suit, the defendants have integrated the prison facilities at Angola.

15. In *Ralph v. Dees*, ___ F.Supp. ___ (Civil Action No. 71-94, M.D. La. 1974) the Court found that the rules and regulations adopted and used by the defendants at the Louisiana State Penitentiary at Angola in connection with disciplinary proceedings and lockdown met or exceeded the requirements set forth by the United States Supreme Court in *Wolff v. McDonnell, supra*. See, also, *Humble v. Hunt*, ___ F.2d ___ (5 Cir. 1975). Therefore, this issue has been rendered moot.

16. An inmate shall be allowed to practice the religion of his choice as long as the religious precepts or practices do not present a threat to the security, discipline and good order of the institution. *Cooper v. Pati*, 378 U.S. 546, 84 S.Ct. 1733, 12 L.Ed.2d 1030 (1964); *Cruz v. Beto, supra*.

17. In general, the rules and regulations pertaining to the censorship of mail used by the Louisiana State Penitentiary are in accord with the practices approved by the United States Supreme Court in *Wolff v. McDonnell, supra*, and *Procunier v. Martinez*, 416 U.S. 396, 94 S.Ct. 1800, 40 L.Ed.2d 224 (1974). An incoming letter from any attorney or judge shall only be opened by prison officials in the presence of the inmate

to whom the letter is addressed. *Wolff v. McDonnell, supra; Procunier v. Martinez, supra.*

18. The defendants have discontinued the use of inmate guards at the Louisiana State Penitentiary. The former practice of using inmate guards at the Angola prison constituted a clear violation of the Eighth Amendment to the United States Constitution. *Gates v. Collier, supra; Finney v. Arkansas Board of Corrections, supra.*

19. The Court recognizes that Mrs. Hunt and Warden Henderson have attempted in good faith to eliminate certain of the conditions the Court has found to be unconstitutional but have been prevented from doing so because of the lack or shortage of funds. However, shortage of funds is no defense to an action involving unconstitutional conditions and practices, nor is it a justification for continuing to deny the constitutional rights of inmates. Thus, in *Gates v. Collier, supra,* at 1319, the Court stated:

> "Where state institutions have been operating under unconstitutional conditions and practices, the defenses of fund shortage and the inability of the district court to order appropriations by the state legislature, have been rejected by the federal courts. In Holt v. Sarver, 309 F.Supp. 362 (E.D. Ark. 1970), aff'd, 442 F.2d 304 (8 Cir. 1971), an installment of the Arkansas prison litigation, the district court stated:
>
> > 'Let there be no mistake in the matter; the obligation of the Respondents to eliminate existing unconstitutionalities does not depend upon what the Legislature may do, or upon what the

> Governor may do, or, indeed, upon what Respondents may actually be able to accomplish. If Arkansas is going to operate a Penitentiary System, it is going to have to be a system that is countenanced by the Constitution of the United States.' 309 F.Supp. at 385 (Emphasis supplied).
>
> "See Watson v. City of Memphis, 373 U.S. 526, 537, 83 S.Ct. 1314, 1321, 10 L.Ed.2d 529 (1963) ('. . . vindication of conceded constitutional rights cannot be made dependent upon any theory that it is less expensive to deny [them] than to afford them.' —desegregation of public parks); *Rozecki v. Gaughan*, 459 F.2d 6, 8 (1st Cir. 1972) ('Humane considerations and constitutional requirements are not, in this day, to be measured or limited by dollar considerations.'—prison heating system); *Jackson v. Bishop*, 404 F.2d 571, 580 (8th Cir. 1968) ('Humane considerations and constitutional requirements are not, in this day, to be measured or limited by dollar considerations . . .'—rehabilitative devices); *Hamilton v. Love*, 328 F.Supp. 1182, 1194 (E.D. Ark. 1971) ('Inadequate resources can never be an adequate justification for the state's depriving any person of his constitutional rights.'—pre-trial detention unit). On the contrary, appellants cite no cases in support of their contention that the relief fashioned by the trial court cannot be granted."

The order to be issued by this Court does not order the Louisiana Legislature to appropriate money for prison reform. However, it does require that if the state of Louisiana chooses to run a prison, it must do so without depriving inmates of rights guaranteed to them by the federal constitution.

20. In accordance with Rule 53 of the Federal Rules of Civil Procedure, the parties shall have 10 days after being noticed of the filing of the Special Master's Report to make written objections to the report. Application to the United States District Court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Rule 6(d) of the Federal Rules of Civil Procedure. The United States District Court after hearing may adopt the report, may modify it, may reject it in whole or in part, may receive further evidence, or may recommit the Special Master's Report with instructions.

RECOMMENDATION

In accordance with the Proposed Findings of Fact and Conclusions of Law previously set forth herein, the personal judicial inspections made by me at the Louisiana State Penitentiary, and after conferring with counsel of record regarding appropriate relief to be granted herein, it is my recommendation that the following Proposed Order be issued:

GENERAL RELIEF

1. IT IS ORDERED that Governor Edwin Edwards and Elayn Hunt be, and they are hereby substituted as party defendants in their official capacities as Governor of the State of Louisiana and Director of the Louisiana Department of Corrections, respectively, in place of former Governor John J. McKeithen and former Director of the Louisiana Department of Corrections, Louis M. Sowers.

2. IT IS FURTHER ORDERED that in accor-

dance with the written stipulation of the parties the individual tort claims of the plaintiffs be, and they are hereby severed from the remaining claims presented herein, and in accordance with the stipulation and consent of the parties, the suit involving the individual tort claims of the parties shall be decided by United States Magistrate Frank J. Polozola.

3. IT IS FURTHER ORDERED that the defendants, Governor Edwin Edwards, Department of Corrections Director Elayn Hunt, and Warden C. Murray Henderson, hereinafter referred to as the "defendants", their successors, agents, servants, employees and all persons acting in concert with them be, and they are hereby enjoined from performing, causing to be performed or permitting to continue, acts, practices and conditions found to exist in connection with the maintenance, operation and administration of the Louisiana State Penitentiary at Angola, Louisiana, in violation of the First Sixth, Eighth and Fourteenth Amendments to the United States Constitution. More specifically, these defendants are enjoined as follows:

SPECIFIC RELIEF

I. Security

A. Immediate and Intermediate Relief

1. IT IS ORDERED that the defendants, and all persons in privity with them be, and they are hereby enjoined and ordered to increase the protection of inmates and civilian personnel at the Louisiana State Penitentiary from attacks and assaults by inmates.

2. IT IS FURTHER ORDERED that the defen-

dants shall immediately begin to employ additional correctional officers at the Louisiana State Penitentiary in order to bring the full security staff at the prison to a minimum of 950 officers within 120 days from the date of this order.

3. IT IS FURTHER ORDERED that the defendants shall immediately place into effect the following procedures at the Louisiana State Penitentiary:

(a) An immediate shakedown and inspection of all inmates, cellblocks, dormitories, work, educational, recreational and eating areas shall be conducted at the Louisiana State Penitentiary to locate and confiscate any weapons, instruments or materials that might be used by an inmate to attack, assault, or threaten any other inmate or civilian personnel at the prison.

(b) Proper communication equipment in addition to the telephones shall be installed in each dormitory, cellblock, work, recreational, educational and eating areas and provided to each correctional officer to allow correctional officers to communicate with and seek assistance, if necessary, of other correctional officers in the event of a disturbance or other emergency at the prison.

(c) Assign at least two correctional officers to each dormitory 24 hours per day, seven days per week. These officers shall be provided with sufficient equipment, such as walkie talkies, to allow the officers to immediately report any disturbance in the area assigned to them.

(d) Assign additional correctional officers to those areas of the prison where inmates have access to tools, equipment and supplies which may be used as weapons

or to make weapons. These correctional officers shall be provided with sufficient equipment to enable them to properly supervise inmates and detect weapons.

(e) Institute appropriate security supervisory training methods to prevent and detect the acquisition, retention and use of weapons by inmates.

(f) Separate, to the extent possible, all known homosexuals from the general prison population.

(g) Strictly prohibit all gambling between the inmates at the Louisiana State Penitentiary.

(h) Separate by placing in cells or such other places as may be determined by prison officials, those inmates who have a record of assault and violence on other inmates or civilian personnel.

(i) Install such temporary housing and fencing as may be necessary to reduce the overcrowding of inmates in the dormitories and to separate the inmates in work, recreational, educational and eating areas.

(j) Report promptly to the District Attorney for the Parish of West Feliciana any and all cases of inmate assaults and other violence committed by inmates, including rapes.

4. IT IS FURTHER ORDERED that the defendants shall continue their present policy of not assigning or using inmates as guards over other inmates and not giving any inmate custodial responsibility over other inmates. The use of inmates as guards or the delegation of custodial responsibility to any inmate over another inmate is hereby enjoined and prohibited.

5. IT IS FURTHER ORDERED that the defen-

dants shall submit to the Court within 60 days from the date of this order a report outlining the procedures taken by them to increase the protection of inmates and civilian personnel at the Louisiana State Penitentiary from assaults by inmates. Copies of this report shall be sent to all counsel of record.

B. Long Range Relief

1. IT IS ORDERED that within 60 days from the date of this order the defendants shall file with the Court a comprehensive and detailed plan together with a timetable for improving the security and protection of inmates and civilian staff at the Louisiana State Penitentiary. Copies of this plan shall be submitted to counsel for all parties. The plaintiffs and intervenor shall file specific objections to the said plan within 30 days after the plan is filed with the Court. This plan shall include but not necessarily be limited to the following:

(a) the construction of additional cells at the prison.

(b) the construction of additional dormitories to relieve the overcrowded conditions in the present dormitories.

(c) alterations, if any, to the inmate classification, housing and work assignment procedures which officials at the Louisiana State Penitentiary deem necessary and appropriate.

(d) the estimates of additional security personnel and equipment needed to ensure the safety and protection of inmates committed to Louisiana State Penitentiary and the civilian staff assigned to the prison and the cost estimates of each.

(e) the outline and scope of any present or future training program for all present and newly employed civilian personnel.

2. IT IS FURTHER ORDERED that the defendants shall file with the Court within 60 days a report on what efforts, if any, have or shall be taken to decentralize the Louisiana State Penitentiary and to open additional prison facilities at other locations in the State of Louisiana. A copy of this report shall be submitted to all counsel of record.

II. Medical Care and Facilities

A. Immediate and Intermediate Relief

1. IT IS ORDERED that the defendants and all persons in privity with them be, and they are hereby enjoined and ordered to provide adequate medical care to each inmate at the Louisiana State Penitentiary at Angola, Louisiana.

2. IT IS FURTHER ORDERED that the defendants shall employ, and continue to employ at all times until further orders of this Court, such additional medical personnel so that the medical staff at the Louisiana State Penitentiary at Angola, Louisiana, shall consist of the following minimum full time medical staff: four physicians; one psychiatrist, two dentists; one psychologist; eleven trained physician assistants; one dental assistant; three nurses, certified as RN; one x-ray and physiotherapy technician; one pharmacist; one laboratory technician; and two medical records technicians. Each professional medical employee shall meet the requirements for licensure in the State of Louisiana. Persons who fill the positions of physician assistant, which is

not subject to licensure in the State of Louisiana, shall be qualified by their education and training to perform the type of medical services which are assigned to physician assistants by the United States Bureau of Prisons, or shall meet the standards required of licensed practical nurses in the State of Louisiana.

3. IT IS FURTHER ORDERED that the defendants, and all persons in privity with them be, and they are hereby enjoined and ordered and required to:

(a) ensure that every inmate in need of medical attention, either for diagnostic or treatment purposes, is seen by a qualified medical attendant when required and by a physician when necessary.

(b) maintain an adequate supply of drugs and medical supplies.

(c) provide within a reasonable time to those inmates who require them eye glasses, dentures and other prosthetics prescribed by a physician.

(d) provide to each inmate medication or other reasonable treatment prescribed by a physician until such time as a physician prescribes otherwise.

4. IT IS FURTHER ORDERED that defendants shall immediately take such action as may be necessary to ensure that the Louisiana State Penitentiary complies in every respect with applicable regulations of the Federal Bureau of Narcotics and Dangerous Drugs.

5. IT IS FURTHER ORDERED that:

(a) no prescription for medications shall be made except in an individual case by case authorization by a physician.

(b) no prescription shall be filled, prepared or dispensed except under the authority and personal supervision of a qualified pharmacist.

(c) a complete record of drug administration to each inmate shall be placed on the inmate-patient's medical record.

(d) no inmate shall be used to deliver drugs of any type to any person at the Louisiana State Penitentiary.

(e) no inmate shall be punished because he seeks medical diagnosis or treatment.

(f) no inmate shall have access to another inmate's medical records.

6. IT IS FURTHER ORDERED that each newly arrived inmate at the Louisiana State Penitentiary shall be examined by a competent physician within seven days after the inmate's arrival at the prison. No inmate shall be required to sign during his initial physical examination at the prison a document entitled "Consent to Operation and Other Medical Treatment" with the surgical procedure and name of the person to perform the procedure left in blank.

7. IT IS FURTHER ORDERED that within 30 days from the date of this order the defendants shall obtain or employ on a contract basis a sufficient number of completely equipped ambulances to provide medical transportation within the confines of the prison or to other institutions when necessary.

8. IT IS FURTHER ORDERED that within 90 days the defendants shall cease during inmates to deliver medical treatment which under the laws of the State of

Louisiana only a licensed physician or nurse is permitted to deliver unless such inmate meets the standards required of a licensed professional in the State of Louisiana. However, the defendants are encouraged to utilize trained and competent inmate personnel to supplement the civilian medical staff necessary for adequate health care.

9. IT IS FURTHER ORDERED that within 120 days all persons confined to the psychiatric unit shall be removed to a therapeutic environment and placed under the direct care and supervision of a physician. These inmates shall, subject to doctors' orders, be accorded all rights given any other inmate at the prison.

10. IT IS FURTHER ORDERED that within 180 days from the date of this order all inmates who have not received a comprehensive physical examination since January 1, 1974, shall be given such a physical examination by a qualified physician.

B. Long Range Relief

1. Within 90 days from the date of this order the defendants shall file with the Court a comprehensive and detailed plan for the development of a medical care delivery system which shall be capable of providing constitutionally adequate medical care to all inmates confined at the Louisiana State Penitentiary. Copies of this plan shall be submitted to the counsel for all parties. The plaintiffs and intervenor shall file specific objections to the said plan within 30 days after the plan is filed with the Court. This plan shall include, but need not necessarily be limited to the following:

(a) whether or not the minimum full time medical staff previously ordered by the Court herein is adequate or should be increased or decreased by any manner. Specific recommendations shall be made for any changes in the minimum full time medical staff previously ordered herein for the General Hospital at the Louisiana State Penitentiary.

(b) a detailed examination and evaluation of all provisions necessary for the delivery of complete medical services to inmates confined at the Louisiana State Penitentiary.

(c) the type and extent of care which shall be provided at the General Hospital at the prison, as well as the utilization of medical services outside the confines of the penitentiary.

(d) the plan shall ensure that all aspects of the medical care delivery system and all programs of medical care and treatment shall comply with the standards provided in the Medicare Program (Social Security Standards) or the standards of the Joint Commission on Accreditation of Hospitals as well as the rules and regulations of the State of Louisiana governing the licensure of hospitals with any additional requirements made necessary by reason of the correctional setting of the delivery system.

(e) the plan shall also include the written organizational structure, formal operating procedures, staffing, job descriptions along with experience, educational and training requirements for each medical department.

III. Electrical and Fire Safety

A. Immediate and Intermediate Relief

1. IT IS ORDERED that within five days from the date of this order, the Governor shall direct the Louisiana State Fire Marshal to conclude forthwith a thorough inspection of the Louisiana State Penitentiary to ascertain the existence of any electrical and fire safety hazard including overpopulation of prisoners in a given area which violates the laws, rules and regulations and standards of the State of Louisiana, the Louisiana State Fire Marshal's Office, or the National Electrical Code. A copy of the Fire Marshal's report shall be filed with the Court within 10 days from the date of this order with copies to counsel for all parties. The report filed with the Court shall also set forth those fire or electrical hazards which constitute an immediate threat to the health, life and safety of the inmates, security officers, and other civilian personnel, the location of the hazard; the number of persons directly affected by the hazard; and what action, if any, shall be taken by the Louisiana State Fire Marshal's Office to eliminate the hazard and to remove those persons affected from the hazard.

2. IT IS FURTHER ORDERED that within 90 days from the date of this order the defendants shall eliminate all electrical and fire safety hazards which shall constitute an immediate threat to the health, life and safety of inmates, security officers, and other civilian personnel at the Louisiana State Penitentiary.

3. The defendants shall further file with this Court within 100 days from the date of this order, with copies

to all parties, a statement prepared by the Louisiana State Fire Marshal which shall set forth whether or not any inmate, correctional officer, or other civilian personnel is confined in any housing area, or assigned to work, educational or recreational area at the Louisiana State Penitentiary which constitutes an immediate threat to the health, life, and safety of the inmates, security officers and other civilian staff personnel at the prison. If so, the report shall state the nature of the violation; the location thereof; the number of persons directly affected; and the action, if any to be taken by the Louisiana State Fire Marshal to eliminate the said fire or electrical hazards or to remove the persons affected from the hazard.

4. Within 90 days from the date of this order the defendants shall prepare comprehensive plans for the evacuation, care and treatment of inmates and civilian personnel in the event of a fire, explosion or natural disaster which might occur at the Louisiana State Penitentiary. The defendants shall have the plans approved by the Louisiana State Fire Marshal's Office and shall file with the Court a certification of approval by the Louisiana State Fire Marshal.

B. Long Range Relief

1. IT IS ORDERED that within 120 days from the date of this order the defendants shall file with the Court a detailed and comprehensive plan, together with a timetable, for the elimination of all other fire and electrical hazards found by the Louisiana State Fire Marshal to exist at the Louisiana State Penitentiary which do not constitute an immediate threat to the health, life and

safety of the inmates, correctional officers, and other civilian personnel at the prison, but which do violate the laws, rules, regulations and standards of the State of Louisiana, the Louisiana State Fire Marshal, and the National Electrical Code. Copies of the plan shall be submitted to counsel for all parties. The plaintiffs and intervenor shall file specific objections to the said plan within 30 days after the plan is filed with the Court.

2. IT IS FURTHER ORDERED that the Governor shall direct the Louisiana State Fire Marshal to conduct periodic inspections at the Louisiana State Penitentiary to ascertain the existence of any violations of the laws, rules, regulations and standards of the State of Louisiana, the Louisiana State Fire Marshal's Office and the National Electrical Code which may develop in the future. Any condition which is found to exist which constitutes an electrical or fire safety hazard shall immediately be corrected in accordance with the orders set forth by the Louisiana State Fire Marshal and the guidelines set forth in this order.

IV. Maintenance, Repair and Construction

1. IT IS ORDERED that within 120 days from the date of this order the defendants shall file with the Court a detailed and comprehensive plan, together with a timetable, setting forth a maintenance, repair and general housekeeping program at the Louisiana State Penitentiary. The purpose of this plan shall be to ensure that further unsafe and unsanitary conditions at the prison do not re-occur once eliminated as required by this order. Copies of this plan shall be sent to counsel for all parties. The plaintiffs and intervenor shall have 30

days after the report is filed with the Court to file objections to the plan.

2. IT IS FURTHER ORDERED that in order to ensure this order is fully and timely complied with and in order to eliminate certain hazardous conditions that exist at the Louisiana State Penitentiary, this Court hereby declares that an extreme public emergency as defined in R.S. 38:2211(d) does hereby exist at the Louisiana State Penitentiary at Angola, Louisiana, insofar as the emergency applies to the construction, repairs, maintenance, or alteration of prison buildings, facilities and structures. Since an extreme public emergency has hereby been declared to exist, the defendants, pursuant to the provisions of R.S. 38:2211(d), are not required to advertise and let out for bids any construction, repair, alteration or maintenance job at the Louisiana State Penitentiary that exceeds the sum of $2,500.00 as is ordinarily required by R.S. 38:2211(a) where no extreme public emergency exists.

3. IT IS FURTHER ORDERED that during the pendency of this extreme public emergency, the defendants shall be allowed to and are hereby encouraged to use inmate labor in the repair, maintenance, alteration, or renovation of existing or new buildings, facilities and structures at the Louisiana State Penitentiary at Angola, Louisiana.

V. Food and Sanitation

A. Immediate and Intermediate Relief

1. IT IS ORDERED that within five days from the date of this order, the Governor shall direct the Louisi-

ana Department of Health to conduct forthwith a thorough inspection of the Louisiana State Penitentiary to ascertain the existence of any health, safety and sanitation hazards which violate the laws, rules and regulations of the State of Louisiana, the Louisiana Department of Health, or the Occupational Safety and Health Act. A copy of the report prepared by the Louisiana Department of Health shall be filed with the Court within 10 days from the date of this order with copies to counsel for all parties. The report filed with the Court shall also set forth those health, safety and sanitation hazards which constitute an immediate threat to the health, life and safety of the inmates, security officers and other civilian personnel; the location of the hazard; the number of persons directly affected by the hazard; and what action, if any, shall be taken by the Louisiana State Department of Health to eliminate the hazard and to remove those persons affected from the hazard. The report shall further state whether or not those persons who participate in food preparation or service meet the requirements of the Louisiana Department of Health for persons engaged in the preparation and service of food to the public.

2. IT IS FURTHER ORDERED that within 90 days from the date of this order the defendants shall eliminate all health, safety and sanitation hazards which constitute an immediate threat to the health, life and safety of inmates, security officers, and other civilian personnel at the Louisiana State Penitentiary.

3. The defendants shall further file with the Court within 100 days from the date of this order a statement

prepared by the Louisiana State Department of Health which shall state whether or not any inmate, correctional officer or other civilian personnel is confined in any housing area; assigned to a work, educational or vocational area; or required to eat any food that is stored, prepared or served in any manner that constitutes an immediate threat to the health, life and safety of the inmates, security officers or other civilian personnel at the prison. If so, the report shall state the nature of the violation, the location thereof, the number of persons directly affected and the action, if any to be taken by the Louisiana Department of Health to eliminate the said health, safety and sanitation hazard or to remove the persons affected from the hazard.

B. Long Range Relief

1. IT IS ORDERED that within 120 days from the date of this order the defendants shall file with the Court a detailed and comprehensive plan, together with a timetable, for the elimination of all other health, safety and sanitation hazards found by the Louisiana Department of Health to exist at the Louisiana State Penitentiary which do not constitute an immediate threat to the health, life and safety of the inmates, correctional officers and other civilian personnel at the prison, but which do violate the laws, rules, regulations and standards of the State of Louisiana, the Louisiana Department of Health, and the Occupational Safety and Health Act. Copies of the plan shall be submitted to counsel for all parties. The plaintiffs and intervenor shall file specific objections to the said plan within 30 days after the plan is filed with the Court.

2. IT IS FURTHER ORDERED that the Governor shall direct the Louisiana Department of Health to conduct periodic inspections of the Louisiana State Penitentiary to ascertain the existence of any violations of the laws, rules, regulations and standards of the State of Louisiana, the Louisiana Department of Health, and the Occupational Safety and Health Act, which may develop in the future. Any condition which is found to exist which constitutes a health, safety and sanitation hazard shall immediately be corrected in accordance with the orders set forth by the Louisiana Department of Health and the guidelines set forth in this order.

VI. Elimination of Racial Discrimination and Segregation

1. In accordance with the Stipulation agreed to by the parties on December 3, 1973, and according to law, IT IS ORDERED that the defendants, and all persons in privity with them, be, and they are hereby enjoined from engaging in racial discriminatory practices of any nature in the operation or administration of the Louisiana State Penitentiary or treatment of prisoners, including racial discrimination in inmate:

(a) housing and other prison facilities;
(b) job and work assignments and promotions made in connection therewith;
(c) classification;
(d) organizations; and
(e) vocational and educational training.

IT IS FURTHER ORDERED that the defendants be, and they are hereby enjoined from engaging in racially discriminatory practices in hiring, firing, selecting,

recruiting and promoting staff, guards and other civilian personnel at the Louisiana State Penitentiary.

3. The defendants shall take affirmative action to maintain the Louisiana State Penitentiary as an integrated facility and shall correct and erase the effects of their past discriminatory practices. In this regard, the defendants shall file with the Court within 60 days from the date of this order a detailed and comprehensive plan for overcoming the continuing present effects of segregation and other forms of racially discriminatory practices or procedures which effectuated disparity in the treatment of the prisoners because of race. The plan to be submitted to the Court shall set forth a program which shall preclude the reinstitution of any racially discriminatory practices or segregation in housing and other prison facilities, inmate activities, organizations, job assignments, classification and vocational and educational training; and staff, guard and other civilian personnel at the Louisiana State Penitentiary.

4. IT IS FURTHER ORDERED that those portions of R.S. 15:725 and R.S. 15:854 which require separate housing and sanitary facilities for black and white inmates be, and they are hereby found to be unconstitutional and compliance therewith is hereby enjoined.

VII. Religious Freedom:

1. IT IS ORDERED that the defendants, and all persons in privity with them shall be and they are hereby enjoined and prohibited from discriminating against any inmate because of his religion.

2. IT IS FURTHER ORDERED that the defendants, and all persons in privity with them, shall be and they are hereby enjoined and prohibited from placing unreasonable restrictions on the free exercise of religious freedoms by an inmate where the religious practice does not present a threat to the security, discipline and good order of the institution.

3. IT IS FURTHER ORDERED that the defendants shall file with the Court within 60 days from the date of this order a detailed and comprehensive plan which shall set forth the rules and regulations pertaining to religious freedoms at the Louisiana State Penitentiary. Copies of this plan shall be sent to counsel for all parties. The plaintiffs and intervenor shall have 30 days from the date the plan is filed with the Court to file specific objections to the said plan.

VIII. Censorship of Mail

1. IT IS ORDERED that the defendants, and any and all persons in privity with them, shall not open or otherwise interfere with any outgoing special correspondence of inmates.

Special correspondence is defined herein as any mail to:

(a) any attorney licensed to practice law in any state or in the District of Columbia;
(b) all state and federal courts;
(c) the President and Vice President of the United States; all Senators and Representatives of the United States Congress; the United States Attorney General's Office, including the local United States Attorney's Office;

(d) the Governor and Lieutenant Governor of Louisiana; all state legislators; the State Attorney General's Office; the Department of Corrections; the Parole Board; Public Defender Office; and the parish District Attorneys.

2. IT IS FURTHER ORDERED that the defendants, and all persons in privity with them, shall be, and they are hereby prohibited from reading or otherwise interfering with any incoming mail from judges of the federal and state courts and any attorney, including United States Attorneys and District Attorneys, except to open and inspect such mail, in the presence of the inmate addressee, whenever the prison officials have reasonable grounds to suspect escape attempts or to discover drugs, weapons, contraband, or other material expressly prohibited by state or federal laws or by prison rules.

3. IT IS FURTHER ORDERED that the defendants shall file with the Court within 60 days a detailed and comprehensive plan which shall set forth the rules and regulations pertaining to censorship of mail at the Louisiana State Penitentiary. Copies of the plan shall be sent to counsel for all parties. The plaintiffs and intervenor shall have 30 days from the date the plan is filed with the Court to make specific objections to the said plan.

IX. Conditions of Punitive or Administrative Confinement and Procedural Due Process

1. This issue having been previously resolved in the case of *Ralph v. Dees, supra,* and the Court having found that these procedures are not only consti-

tutionally valid but also workable, IT IS ORDERED that this issue be, and it is hereby dismissed as moot.

XI. Long-Range Preventative Planning

1. The defendants are further ordered to prepare, as an integral part of the long-range plans and programs previously ordered herein, a comprehensive evaluation and plan which will ensure that the conditions of confinement and treatment of inmates which have been found to be unconstitutional are not reinstated and do nor recur. Without undertaking to dictate or limit the nature or content of this preventative planning, the Court suggests that areas of study should include at least the following:

(a) The feasibility of reducing the inmate population at the Louisiana State Penitentiary such as:

(1) The housing of certain classes of inmates (e.g., first offenders, inmates convicted of non-violent crimes, inmates in need of mental health care) at locations other than at the Louisiana State Penitentiary, including the possibility of arrangements with other state or federal penitentiaries, or instituting community-based facilities within Louisiana to house these prisoners.

(2) Instituting a system of half-way houses to house inmates who have been convicted of minor offenses or certain types of first offenders.

(3) Increased utilization of work-release, parole, and probation programs.

(b) Construction of new housing units which should include:

(1) Plans for the type of housing units which will be constructed including the size, location and number of cells, dormitories or barracks and/or any other alternative. Requirements which will not only eliminate present overcrowding but allow for future expansion of prisoner population should be considered.

(2) Plans for the location of any new housing units within or without the penitentiary complex. These plans should detail the recommended distance between the units, the location and deployment of adequate security forces to prevent inmate escapes and assaults, access to vocational training, educational, and medical facilities, and the utilization of public roads and highways within the complex.

(3) The estimated cost of alternative housing units, including the feasibility of utilizing inmate labor to construct these units and inmate production of the necessary construction materials.

(c) Alternative plans for the delivery of adequate medical and health care which will include:

(1) Advisability of altering the function of the Angola General Hospital and considering the alternatives which include housing certain types of inmates within other state institutions, (e. g., mental hospitals, sanitariums, convalescent homes) or construction of wards in close proximity to such institutions or other available medical facilities.

(2) Agreements with private hospitals or clinics to provide specialized and other services to inmates on a contract basis.

(3) An agreement with the state medical schools to use the Department of Corrections' medical care

delivery system as a component of their medical educational and training programs.

(d) The advisability of creating a state program of educational grants, scholarships and other educational benefits to students studying or receiving training in technical, professional and para-professional fields whose services are needed within the Department of Corrections but unavailable through other means of personnel recruitment. Such a plan could provide for the granting of these educational benefits in return for employment, for a limited time, by the Department of Corrections during or at the termination of their educational program.

(e) The Court is aware that the Law Enforcement Assistance Administration has a program of offering state correctional agencies technical assistance. The Court urges the defendants to seek the assistance and advice of the Law Enforcement Assistance Administration in developing the programs and plans required by this order.

XII. General Provisions

1. In the event any party to this litigation shall have any doubt or question as to the meaning, scope or application of any term of this order, the inquiry shall be submitted in writing by the counsel of record for the inquiring party to United States Magistrate Frank J. Polozola. The responsive communication from the Court shall be in writing. Copies of all such communication shall be filed in the record of this case.

2. The defendants are charged with the duty of fully

explaining the terms of this order to all of their agents, servants, representatives, and employees, including staff, guards and other personnel, to assure their understanding of the Court's requirements and strict compliance therewith. The defendants shall also take immediate steps to assure the publication of this order at the Louisiana State Penitentiary.

3. The Court further reserves the power to issue further and supplemental orders in aid of the provisions of this order or any of its terms and also reserves for determination all issues not expressly dealt with herein, such as the question of reasonable attorneys' fees and costs allowable to plaintiffs.

4. A copy of the Court's order shall be served in accordance with law upon the defendants, Governor Edwin Edwards, Mrs. Elayn Hunt, and Warden C. Murray Henderson, and upon the Attorney General for the State of Louisiana, William Guste. The suit against all other defendants shall be, and it is hereby DISMISSED.

Baton Rouge, Louisiana, this 28th day of April 1975.

/s/ FRANK J. POLOZOLA
UNITED STATES MAGISTRATE

APPENDIX

The following are the Statement of Facts stipulated to by the parties:

BACKGROUND

1. The Louisiana State Penitentiary consists of facilities located at Angola, Louisiana, including areas referred to as Camps A, F, H, and I; the Reception Center and Admitting Unit; the New Prison; the Angola General Hospital and various other structures. It is one of the correctional facilities maintained throughout the State of Louisiana by the Louisiana Department of Corrections.

2. Persons convicted of crimes are committed under State law to the Louisiana Department of Corrections, rather than to any particular facility. The Director of Corrections is charged with the responsibility of assigning each convicted person to an appropriate facility.

3. It is the policy of the State of Louisiana that persons committed to the care of the Department of Corrections are to be treated in a humane manner. It is the goal of the State of Louisiana that such persons are to be rehabilitated in order to effectuate their return to the community as promptly as possible.

4. The Department of Corrections is charged with responsibility for the administration, management and operation of all state correctional institutions. It is also responsible for establishing programs of research and planning; studying the treatment of offenders; and making an annual report to the Governor which is to include the results of inspections of correctional facilities.

5. The Department of Corrections is specifically directed to establish a diagnostic and treatment center which is to undertake medical, educational, psychiatric and social studies of persons committed to its facilities and to provide for the training of medical professionals, whose services are to be utilized in the operation of the center.

6. The Department of Corrections is authorized to establish resources and programs for the treatment of mentally ill and mentally retarded inmates.

7. The Board of Corrections, composed of seven members appointed by the Governor, has statutory authority to determine the policy of the Department of Corrections, but is proscribed from performing administrative or executive functions.

8. The Director of Corrections is vested with responsibility for implementing the policy determinations of the Board of Corrections and with administering the Department of Corrections. The Director of Corrections is authorized to prescribe rules and regulations for the operation of the Department and has supervisory powers over the administration of all institutions, facilities and services of the Department. The Director of Corrections is appointed by the Governor and serves at his pleasure.

9. The Director of Corrections is authorized to appoint personnel necessary for the operation of the Department. She may establish positions and make appointments thereto; transfer duties between positions; assign duties to, direct and control the work of person-

nel. She is directed to establish a training and development program. The Director also has the authority and the duty to discharge or discipline personnel if just cause should arise.

10. In order to provide for the humane care and treatment and to effect the rehabilitation of persons committed to the Department of Corrections, the Director of the Department of Corrections is directed to establish programs of classification, diagnosis, education, counselling and psychotherapy and such other rehabilitation programs as are necessary.

11. The Director of Corrections is directed to prescribe standards for health, medical and dental services. These standards must include preventive, diagnostic, and therapeutic measures for the care and treatment of all inmate-patients confined to the facilities of the Department of Corrections.

12. The Director of Corrections is directed to prescribe rules and regulations for the maintenance of good order and discipline in all facilities of the Department.

13. It is the policy of the State of Louisiana that all facilities for the confinement of persons committed to the Department of Corrections must meet standards of health and decency to be established by the Department of Health. The Director of Corrections is directed to assist the Department of Health in establishing such standards for correctional facilities. The Department of Health is directed to inspect all correctional facilities to ascertain if they are in compliance with such standards and to report its findings to the Governor.

14. It is the further policy of the State of Louisiana that all plans and specifications for new correctional facilities and for repairs or alterations to existing facilities shall be submitted for approval to the State Board of Health; no person is to be confined to a correctional facility not built or maintained in accordance with the rules and regulations of the Board of Health. State law directs the Board of Health to enjoin, restrain and prohibit the continued use of correctional facilities which do not meet these standards. The Department of Corrections is prohibited from using inmate labor in the maintenance, repair and renovation of the buildings and other facilities of the Louisiana State Penitentiary if the cost of the project would exceed $2,500.00.

15. The Warden (superintendent) of the Louisiana State Penitentiary is charged with responsibility for the general management, supervision and control of the inmates confined to the penitentiary. He is responsible for their custody, discipline, welfare and safety. He is also responsible for the training, supervision and control of the employees of the penitentiary.

16. At the time of the trial of this matter there were 529 approved positions for correctional officers at the penitentiary; approximately 480 of these positions were filled. Two hundred of these correctional officers had been employed, at the time of the trial, for less than one year.

RACIAL SEGREGATION AND DISCRIMINATION

17. When C. Murray Henderson became Warden of the penitentiary in 1968, there were no black employees.

At the time of the trial there were approximately 75 black correctional officers.

18. At the time of the filing of this litigation all prison housing facilities and dining halls were segregated by race. Many of the work assignments were racially restricted. Recreational activities and some of the inmate organizations were integrated.

19. As of March 16, 1973, written instructions indicated that initial housing assignments made by the classification committee were based on the inmate's race.

20. On June 12, 1973, the total inmate population of the Louisiana State Penitentiary, including satellite units, was 3,042. Of this total, 2,170 inmates or 71% were black.

21. As of June 15, 1973, the Ash, Cypress, Magnolia, Oak, Pine, Spruce and Walnut Dormitories, Camps A and H and the majority of the cell blocks located in the close security area of the New Prison were racially segregated living areas. Both black and white inmates were assigned to the cell block but they were assigned to separate living areas. The dining halls which served these housing areas were operated in such a manner that they were also segregated by race. The reception center, including the maximum security confinement area, Camps I and F, inmate recreational activities, religious services and all but two inmate organizations were racially integrated.

22. On July 6 and 9, 1973, the supervisory staff, employees and inmates of the penitentiary executed a plan designed to substantially integrate the "New

Prison" area of the penitentiary. Preparatory work necessary to this undertaking included meetings between inmates and representatives of the Warden's office stretching over a period of months, as well as meetings between representatives of the Warden's office, and the Warden, with the security staff. On July 6 and 9, 1974, all inmates assigned to those areas to be integrated moved from their former living quarters to living areas which by this process, were integrated. The racial composition of each living area was to approximate the racial composition of the penitentiary as a whole. Accordingly each dormitory was to be composed of 15-20 white inmates and 30-35 black inmates. The integration process started on July 6, 1973, in the trustee area of the "New Prison." On July 9, 1973, the medium security area (medium yard) was integrated by a similar process with inmates moving all bedding and personal possessions. Approximately 10 days thereafter Camps A and H were integrated in a similar fashion.

23. An integral part of the planning for the integration of the penitentiary was inmate participation. Inmate representatives were informed of the decision to integrate and they in turn informed the inmate population. Inmates working with their selected representatives presented housing lists for the living area to be integrated. They selected compatible residents and tended to group themselves according to age. These proposed housing lists were presented to the Warden and received his approval. As a result of thorough pre-planning and inmate involvement, no extra security measures were taken or needed. The integration process involving the

movement of approximately 1,800 inmates was accomplished without incident.

24. On November 30, 1973, Pine, Walnut, and Ash Dormitories housed only black inmates (661). Twelve of the cellblock tiers housed both black and white inmates; four tiers remained segregated and housed 93 black inmates. The remainder of the prison was substantially integrated. The total population at the end of November was approximately 3,400.

25. The Warden has issued instructions that no job assignments are to be racially restrictive and that all work categories will reflect the same approximate racial composition of the overall inmate population.

ATTORNEY INMATE-CLIENT CORRESPONDENCE

26. At the time of the filing of this lawsuit, all outgoing mail from inmates confined to the Louisiana State Penitentiary was regularly inspected for contraband and/or censored. During this litigation, mail from the plaintiffs to their attorney of record, Mr. David L. Morgan, was opened by prison officials and stamped "censored." Their correspondence referred to various aspects of this litigation.

27. It was the practice at the Louisiana State Penitentiary at Angola that all mail addressed to an inmate's attorney was posted unsealed for inspection.

28. Their correspondence rules and regulations require that all outgoing inmate correspondence be delivered to designated locations unsealed so that it may be inspected then mailed by prison officials. Letters to at-

torneys, courts, state and federal officials and corrections officials may be delivered to these locations for mailing by prison officials, may be sealed and are not subject to inspection.

29. All incoming inmate correspondence, including mail from an inmate's attorney, is opened and inspected outside of the presence of the inmate. The person conducting the inspection is not authorized to read the correspondence or censor it for content. The stated purpose for opening incoming mail is to inspect it for contraband. There was testimony at the trial of this matter, however, that mail to some inmates who, in the opinion of prison officials, were considered high escape risks was in fact read for content.

30. The rules and regulations of the Louisiana State Penitentiary regarding packages state that packages may be received from any person. No inmate is allowed to send or receive any package, however, unless he has signed the form consenting to the opening of packages and the examination of their contents. Accordingly, all packages for inmates are opened and inspected.

MAINTENANCE

31. At the Louisiana State Penitentiary practically all maintenance is performed by inmates. There are not enough sufficiently trained maintenance supervisors with the appropriate authority to conduct an effective preventative maintenance program. Inmates who are assigned to maintenance and repair work are usually incapable of doing the work, have no related employment background and receive no training of any significance in what they are supposed to be doing.

32. In 1966, when the penitentiary began a major repair program, the maintenance department had on hand one saw, one hammer, and a screwdriver. They used a homemade power saw which belonged to the Chief of Maintenance. There were no materials to work with. Those resources were all that was available for the maintenance program for the entire institution.

SECURITY

33. It had been the policy of the State of Louisiana to provide some inmates who had been committed to the Louisiana State Penitentiary with weapons and to assign them to guard duty over other inmates. These inmates are referred to as inmate guards. They were required to work twelve-hour shifts seven days a week. They were not, however, assigned to guard duty inside the dormitory area.

34. In 1968, penitentiary officials estimated that 500 correctional officers would have to be hired to replace these inmate guards. In 1970, only 171 correctional officers were employed at the penitentiary and, as a result, less than 20% of all security posts were manned by "free" persons. In March of 1971, 460 correctional officers were employed; at that time the security force was augmented by 200 inmate guards.

35. The use of inmate guards was discontinued on or about July 15, 1973.

36. Plaintiff, Lee Stevenson, has been an inmate guard at the new penitentiary.

37. In 1971, there were 82 stabbings of inmates at the Louisiana State Penitentiary. In 1972, there were 52

stabbings. From January 1, 1973, to November 27, 1973, there were 137 inmate stabbings, 67 of which occurred during the months of June, July and August.

38. In 1971, three inmates were stabbed to death at the Louisiana State Penitentiary. In 1972, eight inmate deaths were attributed to stabbings. From January 1, 1973, to November 27, 1973, there were nine stabbing deaths at the penitentiary. Five of these deaths occurred during the months of June, July and August of 1973. Many of these inmates were killed, according to penitentiary records, by a person or persons unknown. Inmates confined to the penitentiary have also died after being shot by an inmate guard, struck by a heavy object, or by strangulation. Most of the assailants of these inmates are also unknown, according to penitentiary records. The hospital administrator, in his 1971-72 annual report, stated that there were 11 homicides and three accidental deaths during that reporting period. During this same period the emergency room at the Angola General Hospital which is located within the penitentiary treated approximately 5,000 cases. The 1972-73 annual report reports a total of 13 inmate homicides and three accidental deaths.

39. Colonel Robert G. Bryan, Chief of Security, Louisiana State Penitentiary, has been employed at the penitentiary for over 20 years. He has conducted thousands of shakedown searches and just about every shakedown has produced weapons. Former Associate Warden, Hayden Dees, in the course of his 20 years employment at the penitentiary has found weapons every time he conducted a shakedown search. Illustra-

tive of the fact that inmates frequently have weapons is the knowledge that Lee Stevenson, a plaintiff in this case, was found to be in possession of a knife on 11 separate occasions.

40. Shakedown searches are conducted every day by all correctional officers. Each entire dormitory is searched for weapons on an unscheduled basis two or three times a week. All inmates are searched each time they return to their camps or dormitories.

41. On or about June 8, 1965, Plaintiff, Lee Stevenson, while confined to the Louisiana State Penitentiary, was stabbed and received wounds about his face, neck and head. This attack resulted in an injury to Mr. Stevenson's eye and caused reduced vision. On April 7, 1971, and again on April 16, 1971, Plaintiff Stevenson wrote letters to this attorney, Mr. David Morgan, expressing fear for his (Stevenson's) safety. On April 20, 1971, Mr. Morgan, in a letter to Mr. Stanford O. Bardwell, Jr., Assistant Attorney General for the State of Louisiana and counsel for the defendants herein, advised him of Mr. Stevenson's expression of fear and requested that steps be taken to protect Mr. Stevenson from bodily harm. That date Mr. Bardwell transmitted Mr. Stevenson's and Mr. Morgan's letters to the Director of the Department of Corrections, noting Mr. Stevenson's anxiety for his safety. Mr. Bardwell informed his client, "I can only advise that if a reasonable risk of danger exists, this letter would constitute notice . . ." In addition, Mr. Stevenson personally informed penitentiary officials of his fears for his safety. However, Mr. Stevenson was later stabbed by another

inmate, resulting in serious multiple wounds. Mr. Stevenson's assailant had been caught with a dangerous weapon on five separate occasions prior to his attack on Mr. Stevenson.

42. It is not difficult for inmates to obtain or make weapons at the Louisiana State Penitentiary. There are literally a hundred ways to manufacture a weapon. Inmates under varying degrees of supervision or without supervision have access to machinery and other equipment with which they may manufacture weapons. These weapons are maintained by inmates and often kept in the dormitories. The possession of weapons, which is a fact of inmate life at the penitentiary, places the personal security and safety of both correctional officers and inmates in jeopardy.

43. There is a critical lack of single cells at the penitentiary in which those inmates who constitute a present danger to other inmates can be confined. Penitentiary officials have officially requested the construction of a six hundred-man maximum security facility on numerous occasions over a long period of time. Their requests have gone unfulfilled.

44. Approximately 659 trained and properly supervised correctional officers are needed to supervise the number of persons normally confined to the Louisiana State Penitentiary. At the time of trial there were 529 security officer positions authorized, but the penitentiary had a staff of only some 480 or approximately 170 correctional officers fewer than necessary.

45. At the time of the trial, there was an insufficient number of security personnel to ensure that persons con-

fined to the penitentiary would be reasonably free from attack by fellow inmates. There was a lack of proper supervision. A correctional officer should be stationed in each dormitory 24 hours a day, 7 days a week, with supervisory correctional officers nearby. At the time of trial, only one correctional officer was assigned to every four trustee dormitories and two officers assigned to every four medium security dormitories.

46. One of the principal reasons for the continued lack of sufficient security personnel and for the defendants' inability to fill all authorized security positions is that officials of the Department of Corrections do not have the authority to set or alter the salary structure for these positions. The salary structure is controlled by the Civil Service Commission. The salary which can be offered to a beginning correctional officer is too low to attract and hire the staff which is needed. The remoteness of the penitentiary also makes recruitment difficult. The problem caused by the lack of sufficient correctional officers are exacerbated by a drastic lack of equipment. The design of the penitentiary, from a security standpoint, is inadequate. All of these interrelated problems have been recognized by the responsible officials at the penitentiary, but a continued lack of sufficient funding has resulted in their continuation and magnification. The lack of sufficient security places the lives and persons confined to the penitentiary as well as its staff in continued jeopardy.

MEDICAL

47. Located within the confines of the Louisiana State Penitentiary is the Angola General Hospital. The

hospital has a capacity of 100 patient beds. The Angola General Hospital is the major element of the system for providing medical care to persons confined to the Louisiana State Penitentiary. The penitentiary has a capacity for the incarceration of approximately 3,500 persons. To a limited extent, the services and facilities of the Earl K. Long Hospital of Baton Rouge, Louisiana, and Charity Hospital of New Orleans, Louisiana, are used to augment the medical services provided by the Angola General Hospital. The Hospital Administrator in his 1971-72 annual report stated that the Angola General Hospital provided approximately 46,500 patient treatments during the year. During the 1972-73 reporting period there were approximately 30,800 patient treatments at the hospital, plus 1,059 prosthetic devices were provided to inmates, and there were 1,154 medical appointments or treatments in medical facilities outside the penitentiary.

48. The Angola General Hospital is not accredited by the Joint Commission on Hospital Accreditation and does not meet the Conditions for Participation of Hospitals of the United States Department of Health, Education and Welfare. The hospital is understaffed and has often been operated for extended periods without the services of a resident physician.

49. To staff the medical care delivery system at the penitentiary the defendants, at the time of the trial, were authorized to employ 13 medical personnel, "free people." The following civil service positions were authorized: physician III (2 persons), physician IV (1 person), physical therapist I (1 person), medical laboratory technologist II (1 person), medical specialist I (2 per-

sons), medical specialist II (3 persons), prison hospital supervisor II (1 person), dentist I (1 person), dentist II (1 person), and dentist II (1 person). At the time of trial four physicians and four medical specialist IIs were employed although as previously stated only three physicians and three medical specialists IIs were authorized. The dentist II position was vacant. The hospital did not employ nor were they authorized to hire professional nursing personnel qualified to practice nursing in Louisiana. Of those persons who were employed at the hospital and on its medical staff only two were licensed to practice in the State of Louisiana and no person on the medical staff was licensed to practice in another state.

50. In addition to the authorized medical personnel "free people" on the medical staff, the Angola General Hospital utilizes the services of 54 inmates who are assigned permanently to work at and live in the hospital. They are assigned to the following jobs: housekeeping personnel (10 persons), yard maintenance (2 persons), medical personnel (23 persons), and hospital administrative personnel (19 persons). These inmate medical positions include the following: emergency room attendant; x-ray attendant; physician's assistant; laboratory assistant; leutics and physical therapy assistant; eye, ear, nose and throat clinic assistant; ambulance driver; sick-call assistant; nurse; dental assistant; dental lab assistant; consulting clinic assistant and operating room technician. Inmate hospital administrative positions include the following: bookkeeper; secretary; supply clerk; prescription clerk; medical records clerk; laundry; linen and cleaning clerk; hospital diet cook; dishwasher and secu-

rity clerk. Approximately two-thirds of these inmates have attained an educational level no higher than the eighth grade. None of the inmates assigned duties which involve the delivery of medical care have had any formal medical training or any significant medically related employment experience. Of those inmates who are assigned nursing duties almost half of them have a fifth grade education or lower. Only one inmate assigned as a nurse has had more than nine years of formal education and this inmate is not a high school graduate. One inmate who works as a nurse can barely read or write. The hospital administrator, therefore, has assigned him an assistant.

51. The salary, which is very low for professional employees, which penitentiary officials are authorized to pay qualified medical practitioners, as well as the isolated location of the penitentiary severely hampers their ability to employ a competent medical staff and requires the use of an inmate medical staff. On occasion, the defendants have been authorized to hire medical professionals, but because of the low salary they were authorized to offer, they were unable to recruit persons to fill these positions.

MEDICAL CARE (Clinical Laboratory)

52. The Angola General Hospital maintains a clinical laboratory. The lab is staffed by a "free" person who is not a licensed clinical laboratory supervisor nor a registered laboratory technician. The hospital does not employ the services of a consulting pathologist, nor does it utilize any quality control service. Such quality control service and proficiency testing is available to the lab

without cost. The lab technician, up until the time the lab exhausted its supply of testing agents, conducted individual tests. However, the lab technician has maintained no records or graphs of the results of these tests. The results of these tests are not placed in the inmate-patient's medical record. The hospital does not have the benefit of laboratory services on a 24 hours a day, 7 days a week schedule. The hospital employs no other person who is capable of conducting needed laboratory tests. The lab technician does not permit inmates to enter the laboratory.

53. The clinical laboratory does not have a written organizational plan or manual. There are no written policies or procedures regarding the following normal clinical laboratory tests and procedures: the order of laboratory tests and examinations; the collection of specimens; the preparation of patients; the manner in which isolation patients are handled; safety procedures or equipment quality control. No reports, records or statistical information are maintained.

54. The laboratory, in general, appears to be adequately equipped to meet the clinical laboratory requirement of the hospital. However, the laboratory is underutilized. In spite of this underutilization the medical staff of the Angola General Hospital follows the procedure of sending an inmate to the Earl K. Long Hospital in Baton Rouge for a blood test. The laboratory at the hospital is equipped and the technician is capable of taking the blood sample and mailing the sample to Earl K. Long Hospital for analysis. This is the procedure which is normally followed by most medical facilities not

equipped to conduct a full blood analysis. Instead of employing this procedure, the medical staff underutilizes the capabilities of their laboratory and in doing so, waste the limited patient space which is made available for inmates at Earl K. Long. This unnecessary transportation of inmates between the penitentiary and Baton Rouge places an additional and unnecessary burden on the security staff.

55. The equipment contained in the clinical laboratory has not been adequately calibrated. Therefore, there is no assurance of accuracy of the tests and procedures the laboratory does perform. Calibration should be performed at least annually.

MEDICAL CARE (X-Ray Department)

56. The Angola General Hospital maintains an x-ray department. It is operated by a self-trained inmate hospital worker who has an inmate assistant. This inmate hospital worker has been assigned to operate the x-ray department for 20 some years. He had no training in x-ray technology prior to this assignment. He received his initial instruction in x-ray technology from an inmate who worked in the x-ray department when he was assigned. The qualifications of this inmate are not known. The inmate hospital worker who operates the x-ray department, through a trial and error education and on-the-job training program for 20 years, occasional contacts with radiologists and self-motivated educational efforts, has become a fairly proficient x-ray technician. This inmate operated the x-ray department without adequate supervision. But for this lack of proper supervision by a radiologist, this inmate hospital worker could

qualify and become eligible to take an examination and become a registered x-ray technician.

MEDICAL CARE (Pharmacy and Drug Control)

57. The Angola General Hospital maintains a pharmacy. It is staffed by Mr. Moore, a free-world medical technician, who is neither licensed nor academically trained as a pharmacist. In operating the hospital pharmacy he is assisted by inmates.

58. The pharmacy does not have a written organizational plan nor does it have a procedural manual. There are no written procedures regarding the following normal pharmacy operations: the administration of properly ordered and authenticated medications; precautionary measures for the safe admixture of parenteral products; and the handling and recording of adverse drug reactions and medication errors.

59. The control of needles and syringes was lacking within the pharmacy, as indeed as it was throughout the hospital. Syringes were observed by the medical survey team throughout the hospital and in the possession of inmates. It is Mr. Moore's practice to give a number of needles and syringes to inmates on a weekly basis. These needles and syringes are to be returned at the end of the day. Proper control and security should require strict control and accountability in terms of numbers and location and used needles and syringes should be destroyed, not simply discarded as is the case at Angola.

60. The medical survey team found outdated drugs in the pharmacy. The pharmacy does not have a system designed to regularly check to identify and discard any outdated drugs.

61. Although Mr. Moore maintains an eight hour daily work schedule and his responsibilities other than operating the pharmacy require his presence in other areas of the penitentiary away from the hospital, the pharmacy remains open 24 hours a day. As a result, the medical technicians have access to the pharmacy and dispense medications.

62. Controlled medications prescribed for inmates who are out-patients and assigned to the various "out camps" are administered by security officers. There is no record made of these drug administrations and, therefore, no way to tell whether the inmate received his medication. There is no record notation or communication to the medical staff of an adverse reaction to the medication. To provide controlled drugs which have been prescribed for inmates assigned to one of the out camps, a medical technician prepares a Narcotics Request slip, dispenses a week's drug supply for each inmate and places it is a "locked box." The locked box is then transported, by an inmate, to the out camp. There is no record of this transfer and security officers have refused to sign a receipt for these controlled drugs. The drugs are stored by the security officer and are supposed to be dispensed on an individual dosage basis to the inmate. Some inmates, in fact, do not receive the medication which has been prescribed and ordered for them. The medical staff is without authority to ensure that the medication orders and carried out. The medical staff makes no effort to check to determine whether inmates actually receive medication which has been ordered for them. The hospital administrator described the dispens-

ing of medication to inmates assigned to the "out camps" in the following manner: "I have no control over the security officers and in dispensing medication, it's just on the mercy of the world there."

MEDICAL CARE (Dental Department)

63. The Angola General Hospital maintains a dental department. It is staffed by one dentist (another dentist formerly employed at the hospital had died shortly before trial and had not yet been replaced), a visiting oral surgeon consultant and inmates. The dental department does not employ "free" dental technicians or assistants. It has not been inspected or accredited by the American Dental Association. The hospital administrator in his 1971-72 annual report reports that there was 18,000 separate treatments and oral surgery was performed four times within the reporting year. There were 27 major oral surgeries, 102 full dentures, 260 partial dentures and 102 dentures either repaired or relined according to his 1972-73 annual report.

64. The dental department does not have a written organizational plan, nor does it have a written procedural manual or statement of policies.

65. Inmates are not given a dental examination when they arrive at the penitentiary or within a reasonable time thereafter. Only those inmates who raise dental complaints are examined. There is no regular or periodic dental exam. The dental department does not maintain records of those inmates it does examine. The normal special dental report which is commonly used by dentists is not used at the penitentiary. As a result,

there is no dental care or treatment program based on the needs of the inmates.

MEDICAL CARE (Surgical Department)

66. The Angola General Hospital maintains a surgical department. The physical plant of the surgical suite is conducive to and could provide an active functional operating capacity, but it has been drastically underutilized, no major surgery having been performed within the last eight years. The consequences of such underutilization is that the surgical suite is rapidly deteriorating and its equipment has become obsolete and/or inoperative. Most of the surgical department which is a separate portion of the hospital, has long been left vacant and unused. The hospital administrator stated that, in spite of the capacity and potential of the physical plant and equipment available, surgical services are not offered,with the exception of some minor surgery, e.g., toenail removal. He explained that this was due to the lack of an adequate staff to provide post-operative care.

67. To offset this lack of surgical services, penitentiary officials have entered into agreements which provide that, on a limited basis, inmates may be treated and operated on at Charity Hospital in New Orleans, Louisiana, and at Earl K. Long Hospital in Baton Rouge, Louisiana. Charity Hospital will admit and treat inmate-patients on an available bed basis, and the Earl K. Long Hospital has provided nine patient beds for use of inmates. Because of the limited space available for inmate-patients at these hospitals and by reason of the

drastic underutilization of the surgical department at the Angola General Hospital, inmates in need of surgery must wait five to six months. In some instances, the Charity Hospital has refused to receive and admit inmates. In other instances the security staff has refused to permit the transfer of inmates to these hospitals, giving only unspecified "security reasons" when informing the medical staff.

68. The surgical department maintains a surgical log that lists the name of the inmate-patient, the surgical procedure performed, the person performing the surgical procedure and all assistants, but it fails to indicate whether there were any complications or whether tissue specimens had been submitted for laboratory evaluation. One reason for the lack of notations regarding tissue evaluation is that the hospital's clinical lab is not asked to perform tissue analyses.

69. Most of the equipment in the surgical department is old and obsolete. The medical staff and even the inmate who is assigned as the operating room technician do not know whether the equipment is in working condition. The equipment is deteriorating because of the lack of use and maintenance. The cleaning and maintenance of the operating room, which is still utilized for minor surgery (approximately 240 times in the 1971-72 reporting year and 120 times during the 1972-73 reporting year) and occasionally for major surgery and autopsies, is not appropriate for an operating suite.

70. In the past a surgeon visited the hospital on a regular schedule and performed surgery. However, due

to the lack of equipment and the lack of a qualified medical staff to assist and to provide post-operative care, he declined to perform further surgery at the hospital.

MEDICAL CARE (Emergency Department)

71. The Angola General Hospital maintains an emergency department. It is staffed by two inmate hospital workers who, prior to their assignment to the emergency room, had no medical training nor medically related employment experience and are not qualified to perform the duties assigned to them. The emergency room is one of the most active departments of the hospital. In his 1971-72 annual report the hospital administrator stated that there were approximately 5,000 emergency room treatments during that reporting year.

72. Patients in need of emergency treatment beyond the capabilities of the Angola General Hospital are transported to medical facilities outside the penitentiary in vehicles which the hospital administrator declined to classify as ambulances. The vehicles are not properly equipped. He describes them as antiques. In the past a fully equipped ambulance has been requested unsuccessfully by hospital officials. A fully equipped ambulance is necessary to transport emergency and other inmate-patients from the penitentiary to outside medical facilities.

73. The medical equipment in the emergency department is antiquated and in a poor state of repair, and, when examined by the survey team, it was described as filthy. In addition, the lighting was inadequate.

MEDICAL CARE (Out-Patient Services)

74. Sick call for the approximately 1,350 inmates confined to cell blocks, the reception center and admissions unit, death row maximum security (C.C.R.), and the out-camps is conducted on an irregular basis on weekdays by a medical technician and inmate assistant. Sick calls start at approximately 5:00 a.m. and the procedure is similar to that followed at the medium and minimum security areas, inmates confined to the New Prison dorms; inmates present themselves when the medical technician arrives. However, those inmates confined to cells cannot leave their cells to present themselves to the medical technician, so they inform a correctional officer of their medical problem. The correctional officer is then supposed to give the names of these inmates to the medical technician when he arrives. Any inmate who must be referred to the penitentiary hospital is escorted by correctional officers.

75. Due to the lack of sufficient numbers of medical technicians employed at the penitentiary, sick call at the cell blocks, reception center and admissions unit, death row, maximum security (C.C.R.) and out camps is conducted on infrequent intervals. At the time of the hospital administrator's testimony, sick call had not been conducted at these locations for three weeks. This problem most frequently occurs during the summer months when medical technicians are on vacation.

76. Inmates who are scheduled to be examined by a doctor or one of the visiting consultants are listed on a sheet referred to as a "hospital call-out." This list is

posted at various locations throughout the penitentiary. An inmate may be placed on "call-out" by the doctors, medical technicians and frequently by other inmates. The procedure for inmates who seek dental care is somewhat different, since the dental department is operated separately from the medical department. When an inmate raises a dental problem during sick call, he is instructed by the medical technician to write a letter to the dentist who will presumably have him placed on the "dental call out." This process may often take six or eight weeks.

77. The out-patient service, of which emergency services is a portion, does not have a written organizational plan or procedural manual. There is no specified time when inmates may go to the hospital for treatment; no posted schedule of days and times when doctor hold sick call at the hospital; no posted schedule of time during which inmates may go to the pharmacy; and no posted schedule for holding sick call in the cell blocks or at other locations. In addition there are no established and written procedures to indicate how emergency cases are to be handled, how an assault victim is to be treated, how an inmate under the influence of alcohol is to be treated, or procedures to be followed in admitting an inmate to the hospital.

78. The hospital's diet kitchen is not properly equipped. The inmate cooks lack the expertise and do not have the guidance to enable them to prepare a diet which conforms to a patient's medical and nutritional needs. When inspected by the medical survey team, the sanitation of the kitchen was deplorable.

MEDICAL CARE (Physical Therapy)

79. The Angola General Hospital has a physical therapy department. It is operated by an inmate with a tenth grade education. He had no medical experience or training prior to being assigned to the physical therapy department and has had no formal medical education or training subsequent to his assignment. The hospital does not employ the services of a qualified physical therapist.

80. The inmate who operates the physical therapy department prescribes and administers various physical therapy treatments. He does so without prior direction, instruction and/or direct supervision. He records the treatment which he has prescribed and which he has administered in the inmate's medical record. A physician or a medical technician thereafter often signs his entry.

MEDICAL (Medical Records)

81. The Angola General Hospital maintains a medical records department. It is operated and staffed entirely by inmates. The hospital does not employ any civilian clerks, a medical record librarian, nor do they have the services of a consultant medical record librarian. The inmates assigned to the medical records department have not received any training in the operation and management of a medical records department or in the manner in which medical records departments should be maintained or the information which medical records should contain. A medical records department is normally operated by and under the supervision of a person who is at the minimum an accredited medical records technician.

82. Officials of the penitentiary recognize that the

use of inmates in the medical records department presents a custody and control problem. The accuracy and confidentiality of the doctor-patient relationship and of the medical records is violated. Portions of the medical records have been purchased and stolen. Not only do inmates have access to the medical records, but those persons working in the medical records department do not have the authority to prevent security personnel from examining an inmate's medical record.

MEDICAL CARE (Psychiatric Services)

83. The Angola General Hospital does not have a psychiatric unit, there is no in-patient area for persons in need of psychiatric treatment. Inmates who normally would be admitted to a psychiatric treatment facility are housed in an area of the cell block, which is referred to as the psychiatric unit. It consists of one tier of a four tier cell block. The cells are similar to all other cell block cells.

84. A consulting psychiatric team composed of a psychiatrist, a psychologist and social worker visit the penitentiary two evenings a week and on Saturdays. The psychiatric team visits the inmates confined to the psychiatric unit and conducts interviews and group counselling sessions. The psychiatric team has approximately 500 active inmate-patients who are under their care. Their treatment consists primarily of the administration of medication. Approximately 20% of all inmates, or 680 inmates, have deep seated emotional problems or are psychotic. Approximately 40% of the inmate population, or 1,360 inmates, would benefit from psychiatric treatment.

85. Inmates in need of psychiatric treatment who are confined to the psychiatric unit are not under the supervision of medical personnel, but the supervision of correctional officers. Neither these correctional officers nor any member of the medical staff are qualified to render psychiatric treatment or to supervise the custody of these inmates. Medications are administered to inmates in the psychiatric unit either by correctional officers or an inmate hospital worker. No notes, medical records or observations of the inmate confined to the psychiatric unit are recorded.

86. Inmates who have been admitted to the psychiatric unit are confined to small cells and are permitted out of the cell only in the morning to shower. They are not allowed out of their cells for exercise. The lack of a sufficient number of correctional officers is cited as the reason for not permitting inmates confined to the psychiatric unit to leave their cells for exercise and have no contact with others except the correctional officers or occasional visitors, such as the medical survey team.

87. The conditions and circumstances of confinement in the psychiatric unit are not conducive to therapeutic treatment. The psychiatric unit is totally inappropriate for the confinement of a psychiatric patient. Inmates in need of psychiatric treatment should be housed in a separate specialized facility and under the supervision of a qualified medical staff.

NO. 82-281

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1982

DAVID C. TREEN, et al.
Petitioners

versus

HAYES WILLIAMS, et al.
Respondents

On Petition For Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

George M. Strickler, Jr.
Tulane Law School
New Orleans, LA 70118

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OPINIONS BELOW

The opinion of Judge Frank J. Polozola of the Middle District of Louisiana, dated August 5, 1980, dismissing the damage claim by the individual plaintiffs is not reported, but is included in the appendix to the Petition for Certiorari (Appendix F). The opinion of the United States Court of Appeals for the Fifth Circuit affirming in part and reversing and remanding in part is reported, Williams, et al. v. Treen, et al., 671 F.2d 892 (1982), and is included in the appendix to the Petition for Certiorari in Appendix B. Rehearing was denied by the Court of Appeals in an unreported opinion on April 28, 1982. (Appendix A).

JURISDICTION

A timely petition for certiorari was filed in this matter. Respondents

do not contest the jurisdiction of the Court.

STATEMENT OF THE CASE

This action was filed in 1971 by four inmates of the Louisiana State Penitentiary at Angola against nine state officials ranging from the Governor of Louisiana to several security officers at the prison. The plaintiffs alleged that overall conditions at the prison constituted cruel and unusual punishment in violation of their rights under the Eighth and Fourteenth Amendments. Injunctive relief and damages were sought on behalf of a class of inmates. In addition, plaintiff Arthur Mitchell claimed that he had been intentionally deprived of medical treatment by prison officials as a means of punishing him in violation of his rights under the Eighth Amendment and the due process clause of the Fourteenth Amendment. Plaintiff Hayes Williams alleged that he had been punished without benefit of any trial, hearing or procedural due process.

A series of hearings on the injunctive aspects of the suit were conducted in 1973 and 1974. Based on evidence presented at those hearings, the district judge found that conditions at Angola would "shock the conscience of any right thinking person" and "flagrently violate[d] basic constitutional requirements as well as applicable state laws." He granted broad injunctive relief to remedy illegal conditions at the institution. Williams v. McKeithen, No. 71-98 (MD.La 1975) (Appendix K to Peitition for Certiorari). The Court of Appeals affirmed. Williams v. Edwards, 547 F.2d 1206 (5th Cir. 1977).

The district judge did not address the individual damage claims in the 1975 order. In his order dated June 10, 1975, the judge stated that "in accordance with the stipulation and consent of all parties, the suit involving the individual tort claims of the plaintiffs shall be tried and decided by the United States Magistrate..." (CA No. 71-98) (Appendix K to Petition for Certiorari at 110). The record reflects in years between 1975 and 1980 considerable activity with regard to implementation of the injunctive decrees, but no trial on the damage

claims was ever conducted.

On August 5, 1980, the attorney for the plaintiffs was awarded attorney fees for his successful prosecution of the case. (Appendix E to Petition for Certiorari). On August 6, 1980, the district judge, without any motion or request from defendants, suddenly dismissed the individual damage claims on the ground that the rights violated by the prison officials had not been "clearly established" at the times in question and that defendants were accordingly immune from liability under Procunier v. Navarette, 434 U.S. 555 (1978). (Appendix F to Petition for Certiorari). The plaintiffs' attorney promptly withdrew from the case. Two of the named plaintiffs, Hayes Williams and Arthur Mitchell, filed timely pro se notices of appeal.[1] Undersigned counsel was appointed by the Court of Appeals to brief and argue the cases for plaintiffs-appellants.

Noting that the district courts' dismissal of plaintiffs' claims had not followed an evidentiary hearing or been provoked by a motion for summary judgment, the Court of Appeals concluded that the district judge erred in deciding that defendants were entitled to the defense of qualified immunity without a factual basis for such a finding.

> In order to grant a qualified immunity, a district court must find that the defendnat officials' position required the exercise of discretion and that his allegedly tortious conduct was undertaken within the scope of his discretionary authority. These issues involve questions of fact which must be determined through the use of appropriate fact-finding procedures; i.e. summary judgment proceedings or an evidentiary hearing.
>
> In the instant case, the District Court held that all the defendants—from the individual jailers

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[1] The other two plaintiffs, Lee Stevenson and Lazarus Joseph, Jr., failed to notice appeals and the Court of Appeals ruled that the notices filed by Hayes and Mitchell could not be considered as satisfying the filing requirements for Stevenson and Joseph under Rule 4(a) of the Federal Rules of Appellate Procedure. Williams v. Treen, supra, 671 F.2d at 895.

> to the Governor—were immune from personal liability. The trial court reached this conclusion without ever explicitly finding that these state employees exercised discretionary authority, and without finding that the actions here in question were undertaken within the scope of that authority. In fact, the order of dismissal fails to even identify the supposedly immune defendants." Williams v. Treen, supra, 671 F.2d at 897 (footnotes omitted).

The Court of Appeals also noted that, not only was there no evidence on which the district judge could base a decision on qualified immunity, but the record was entirely void of any showing that defendants had ever claimed immunity, 671 F.2d at 896, n.6. Furthermore, the Court found "considerable confusion as to the identity of the defendants still in the case in 1980, the time when the dismissals were finally entered." 671 F.2d at 897, n.9. The Court of Appeals remanded the suits of Hayes and Mitchell, to allow them to put on evidence in support of their claims and, presumably, to allow those defendants still in the case to claim and make out the defense of qualified immunity. But because of the ruling of the district court that the constitutional rights of the plaintiffs had not been "clearly established" in 1970, the Court of Appeals went on to hold that a prison official who had acted in violation of clearly established state law (such as the prisons own regulations) could not claim an immunity based on reasonable good faith. 671 F.2d at 900.

REASONS WHY THE WRIT SHOULD BE DENIED

1. The Defense of Qualified Immunity Was Not Properly Raised in the Courts Below

Qualified or "good faith" immunity is an affirmative defense that must be pleaded by the defendant official. Gomez v. Toledo, 446 U.S. 635 (1980). As noted by the Court of Appeals, not only did the district court dismiss the plaintiffs' damage claims ex parte without a motion from defendants, but the defendants have never claimed immunity of any kind for their actions. 671 F.2d at 896, n.6.

The only question raised in the petitioners' application is whether they are entitled to the qualified immunity defense even though their actions violated established state laws and regulations. Certainly this Court should not agree to decide that issue on the merits if the defendants have waived their right to raise any immunity defense. If, on the other hand, the defendant officials may belatedly claim the defense, that question should be first addressed by the district court which will have the opportunity to consider evidence on the reasons for the failure of defendants to plead or otherwise invoke the defense. Nothing in the Court of Appeals opinion precludes an attempt by the defendants from raising the defense by motion on remand.

2. Review of the Court of Appeals Decision at this Time on this Record Would be Premature and Unnecessary

Because no evidentiary hearing has ever been conducted on the plaintiffs' damage claims, whether it will even be necessary for the defendants on remand to invoke a qualified immunity or other defense is purely speculation. The Court of Appeals had to address the immunity issue because of the grounds of the district court's dismissal. But the holding of the Court of Appeals that defendants will not be able to rely on the alleged uncertain state of federal law at the time of their actions is not equivalent to a finding that any defendant will be liable for damages or that any defendant will be deprived of a defense. If, for example, the plaintiffs failed to prove their claims there would be no need for the district court to ever reach the qualified immunity issue and, even were the plaintiffs to satisfy their burden of proof, the defendants may have defenses other than qualified immunity that will dispose of their liability. Review of the Court of Appeals decision at this time on this record would result in an unnecessary advisory opinion.

3. The Record In This Case Is a Totally Inadequate Basis For A Decision on the Merits of the Qualified Immunity Issue

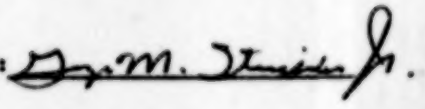
Even were the Court to assume that some of the individual defendants would be held liable for damages unless they were able to successfully raise the "good faith" defense, the Court should nevertheless deny the writ. Because there is no record on the damage issue other than the initial pleadings (which contain no claims of qualified immunity), the Court will have no way to evaluate the extent of discretion exercised by the defendants or of their knowledge of the relevant statutes or state regulations. Indeed, there is absolutely no record demonstrating that these defendants exercised the kind of discretionary powers which would entitle them to the protection of qualified immunity. See, Harlow v. Fitzgerald, ____U.S.____, 102 S.U. 2727, 2738 (1982). This Court should not answer important legal questions without a factual background showing how the answers will affect the case at hand. Article III of the Constitution demands no less.

CONCLUSION

For the reasons stated above, the petition for writ of certiorari should be denied.

Respectfully submitted,

George M. Strickler, Jr.
Tulane Law School
New Orleans, LA 70118

BY: 

CERTIFICATE OF SERVICE

I hereby certify that I mailed three copies of the foregoing Opposition To Petition For Certiorari, first class postage prepaid, on this 2nd day of December, 1982 to:

J. MARVIN MONTGOMERY
Assistant Attorney General
Louisiana Department of Justice
1885 Wooddale Blvd., Suite 1218
Baton Rouge, LA 70806-1590

George M. Strickler, Jr.

NO. 82-281

IN THE
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Petitioners

versus

HAYES WILLIAMS, et al.
Respondents

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to the United States Court of Appeals
for the Fifth Circuit

MOTION OF RESPONDENTS TO
PROCEED IN FORMA PAUPERIS

Pursuant to Rule 53(1) of the Rules of this Court, motion is hereby made that the respondents be allowed to proceed in forma pauperis before this Court for the reason stated in the attached affadavit.

Respectfully submitted,

George M. Strickler, Jr.
Tulane Law School
New Orleans, LA 70118

CERTIFICATE OF SERVICE

I hereby certify that I mailed three copies of the foregoing Motion of Respondents To Proceed In Forma Pauperis, first class postage prepaid, on this 2nd day of December, 1982 to:

J. MARVIN MONTGOMERY
Assistant Attorney General
Louisiana Department of Justice
1885 Wooddale Blvd., Suite 1218
Baton Rouge, LA 70806-1590

George M. Strickler, Jr.

AFFADAVIT

PARISH OF ORLEANS
STATE OF LOUISIANA

GEORGE M. STRICKLER, JR., being duly sworn, deposes and says:

1. I am the attorney for the respondents, Hayes Williams and Arthur Mitchell. I was appointed to represent them by the Court of Appeals for the Fifth Circuit after they had filed timely pro se notices of appeal from the dismissal of their case by the district court. Both respondents are presently incarcerated in the Louisiana State Pentitentiary at Angola where they have been inmates since before 1971.

2. To the best of my knowledge and belief, neither respondent is able to pay or give security for the fees and costs associated with this proceeding.

Before me on this ____ day of
December, 1982

Notary Public

George M. Strickler, Jr.